ONTARIO
LABOUR RELATIONS BOARD
REPORTS

May/June 2012

Ontario

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A Bimonthly Series of Decisions from the
Ontario Labour Relations Board

Cited [2012] OLRB REP. MAY/JUNE

EDITORS: VOY STELMASZYNSKI
LEONARD MARVY

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Bar – Certification – Collective Agreement – Constitutional Law – Construction Industry – Employer Support – Timeliness – On the agreed statement of facts there was no dispute that the employer was involved, from time to time, in the installation of new poles, conduit, fibre optic cable, copper cable in new residential subdivisions and this work included the digging and backfilling of trenches, the laying of conduit, the pulling of cable, the replacing and installing of junction boxes and pedestals and bases and the stringing of lines on poles – The Board noted that even if the principal business of the employer is not in the construction industry, if the employer only occasionally or intermittently engages in construction industry work it is enough for the employer to be found to be an employer in the construction industry – The Board found it difficult to conceive the work as being anything other than construction and noted that the attempt to argue the work was maintenance failed since the installation of new telecommunication infrastructure to expand the Bell network can no more be characterized as maintenance than the building of a new highway can be characterized as maintenance to the Province's existing highway system – Fifteen months prior to these applications the employees' Association and the employer renegotiated their collective agreement mid-term and entered into a second one (ratified by the employees) without jointly seeking the Board's consent – The Board reviewed its case law under s. 58(3) noting that the statute explicitly requires that private arrangements to terminate a collective agreement early be monitored and supervised by the Board, which would remove any possibility of other employees or trade unions arguing that the prior arrangements of the parties were inadequate – The Board rejected an argument that the section was somehow discretionary, finding that if a collective agreement shall not be terminated by the parties before it ceases to operate without the consent of the Board, and the Board's consent has not been granted (let alone even been sought), the collective agreement cannot be terminated – Accordingly, the second collective agreement was not a bar to the applications – Finally the Board dealt with the Association's late submissions that the matter was federal (given the work was for Bell) and not within the Board's jurisdiction – For a number of reasons the Board refused to entertain this motion, including that the employer knew the facts underlying the constitutional issue and failed to raise them in a timely fashion and no notice was provided to the Attorneys General pursuant to the Board's Rules or the *Courts of Justice Act* – Alternatively, assuming it was wrong not to entertain the constitutional question, the Board found that the matter was within provincial jurisdiction relying on a number of cases that noted a general construction company whether building an airport or a telephone line has only a "casual" (in the words of the jurisprudence) relationship with its federal customers which cannot alter the constitutional authority over its regular line of business – Accordingly, if required, the Board found the activities of Expercom to be subject to provincial regulation

EXPERCOM TELECOMMUNICATIONS INC.; RE L.I.U.N.A., LOCAL 24; RE PORT PERRY EMPLOYEES ASSOCIATION 445

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Certification – Construction Industry – Intimidation and Coercion – Representation Vote – Unfair Labour Practice – The employer alleged that during an organizing campaign certain union organizers told individuals that if they joined the union now they would have to pay $50 to join, whereas if they joined later it would cost a lot more – The Board noted that there is nothing inappropriate with a trade union having a two-tiered initiation fee structure *provided* the lower initiation fee is made available to all employees of the employer at the time of certification and not only to those who signed an application for membership card in advance of the union's certification – Where individuals are told they will be required to pay more later, the Board is unable to determine if the individuals signed the card because they wanted to join the union or because they wanted to avoid having to make a larger payment – After hearing the evidence of five employees, the Board found each witness to be credible and their evidence to be plausible – The union organizer, who was available, did not testify – Accordingly the Board found that the union organizer had made the alleged statements – The Board found the jurisprudence to be clear: in these situations a cloud is cast over the reliability of the membership evidence – Finally, the Board noted that even though only five employees came forward, the Board was unable to determine the extent to which the employees of the employer were aware of the statements made by the organizer, but inferred that since the organizer collected at least 25% of the cards, the statements were more than likely made to more than five individuals – In these circumstances, given the reliability of the membership evidence was in doubt, the Board found it appropriate to order another representation vote – Application granted; matter continues

GRAHAM BROS. CONSTRUCTION LIMITED; RE L.I.U.N.A. ONTARIO PROVINCIAL DISTRICT COUNCIL; RE I.U.O.E., LOCAL 793.................................... 471

Certification – Employer Support – Intimidation and Coercion – *Prima Facie* Motion – Representation Vote – Unfair Labour Practice – The incumbent union, LIUNA Local 1110, lost a certification vote to HOPE Local 2220 by a significant margin – Local 1110 asked the Board to set aside the vote and dismiss the certification application on the basis that what occurred was so harmful that the true wishes of the employees were not disclosed in the vote – On a motion by Local 2220 to dismiss Local 1110's allegations on a *prima facie* basis the Board reviewed its cases dealing with how it will approach allegations of misconduct in the face of a vote which has already been determined, and found that none of the allegations, individually or collectively, would lead the Board to conclude that the true wishes of the employees (in this large and geographically separated bargaining unit) were not reflected in the results of the representation vote which expressed the choice of the employees by over a three to one margin—Accordingly the motion succeeded – Certificate issued

1367178 ONTARIO INC. CARRYING ON THE BUSINESSES KNOWN AS THE CHARTWELL SENIORS HOUSING REIT LONG TERM RESIDENCES, THE WESTMOUNT, THE WOODHAVEN, THE WYNFIELD AND THE WATERFORD; RE HEALTHCARE, OFFICE AND PROFESSIONAL EMPLOYEES UNION, LOCAL 2220; RE UBCJA; RE ONTARIO FEDERATION OF HEALTH CARE WORKERS, LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 1110...... 429

Charter of Rights and Freedoms – Construction Industry – Judicial Review – Non-Construction Employer – The Board concluded ([2009] OLRB Rep. Nov/Dec 826) that the declarations required by s. 127.2 when an employer is found to be a non-construction employer substantially interfered with the process of collective bargaining, contrary to s. 2(d) of the *Charter*, and the infringement could not be saved by s. 1 – On judicial review, the Divisional Court found no such infringement ([2010 OLRB Rep. Jan/Feb 166) – On appeal, the Court of Appeal affirmed that freedom of association is enjoyed by individuals not unions – There was no substantial interference with members' s. 2(d) rights – A s. 127.2 declaration would not make it impossible for the unions' members to meaningfully exercise the freedom to associate – Appeal dismissed

INDEPENDENT ELECTRICITY SYSTEM OPERATOR; RE CANADIAN UNION OF SKILLED WORKERS, LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, ONTARIO PROVINCIAL DISTRICT COUNCIL, LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 1059, OLRB AND ATTORNEY GENERAL OF ONTARIO, RE PROVINCIAL BUILDING AND CONSTRUCTION TRADES COUNCIL OF ONTARIO AND GREATER ESSEX COUNTY DISTRICT SCHOOL BOARD; OLRB.. 553

Collective Agreement – Bar – Certification – Constitutional Law – Construction Industry – Employer Support – Timeliness – On the agreed statement of facts there was no dispute that the employer was involved, from time to time, in the installation of new poles, conduit, fibre optic cable, copper cable in new residential subdivisions and this work included the digging and backfilling of trenches, the laying of conduit, the pulling of cable, the replacing and installing of junction boxes and pedestals and bases and the stringing of lines on poles – The Board noted that even if the principal business of the employer is not in the construction industry, if the employer only occasionally or intermittently engages in construction industry work it is enough for the employer to be found to be an employer in the construction industry – The Board found it difficult to conceive the work as being anything other than construction and noted that the attempt to argue the work was maintenance failed since the installation of new telecommunication infrastructure to expand the Bell network can no more be characterized as maintenance than the building of a new highway can be characterized as maintenance to the Province's existing highway system – Fifteen months prior to these applications the employees' Association and the employer renegotiated their collective agreement mid-term and entered into a second one (ratified by the employees) without jointly seeking the Board's consent – The Board reviewed its case law under s. 58(3) noting that the statute explicitly requires that private arrangements to terminate a collective agreement early be monitored and supervised by the Board, which would remove any possibility of other employees or trade unions arguing that the prior arrangements of the parties were inadequate – The Board rejected an argument that the section was somehow discretionary, finding that if a collective agreement shall not be terminated by the parties before it ceases to operate without the consent of the Board, and the Board's consent has not been granted (let alone even been sought), the collective agreement cannot be terminated – Accordingly, the second collective agreement was not a bar to the applications – Finally the Board dealt with the Association's late submissions that the matter was federal (given the work was for Bell) and not within the Board's jurisdiction – For a number of reasons the Board refused to entertain this motion, including that the employer knew the facts underlying the constitutional issue and failed to raise them in a timely fashion and no notice was provided to the Attorneys General pursuant to the Board's Rules or the *Courts of Justice Act* – Alternatively, assuming it was wrong not to entertain the constitutional question, the Board found that the matter was within provincial jurisdiction relying on a number of cases that noted a general construction company whether building an airport or a telephone line has only a "casual" (in the words of the jurisprudence) relationship with its federal customers which cannot alter the constitutional authority over its regular line of business – Accordingly, if required, the Board found the activities of Expercom to be subject to provincial regulation

EXPERCOM TELECOMMUNICATIONS INC.; RE L.I.U.N.A., LOCAL 24; RE PORT PERRY EMPLOYEES ASSOCIATION 445

Conflict of Interest – Between two dates of hearing of an unfair practice complaint, counsel for the applicants accepted employment with the law firm that represented the responding parties – The Board considered whether the lawyer had received confidential information attributable to a solicitor-client relationship and, if so, was there a risk it would be used to the prejudice of the client – Assuming the answer to the first question had to be in the affirmative, the Board then considered whether reasonable measures were taken by the employing firm to ensure that no disclosure would occur by the tainted lawyer to other members of the firm – The measures might include the building of "ethical walls" between lawyers at the firm, monitoring by an independent lawyer, notice to the tainted lawyer's former clients, and the application of the *Rules of Professional Conduct* – The Board held that the steps taken by the responding party's law firm fell short of dispelling a conflict of interest – The law firm was removed as counsel of record for the responding party – Matter continues

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Constitutional Law – Bar – Certification – Collective Agreement – Construction Industry – Employer Support – Timeliness – On the agreed statement of facts there was no dispute that the employer was involved, from time to time, in the installation of new poles, conduit, fibre optic cable, copper cable in new residential subdivisions and this work included the digging and backfilling of trenches, the laying of conduit, the pulling of cable, the replacing and installing of junction boxes and pedestals and bases and the stringing of lines on poles – The Board noted that even if the principal business of the employer is not in the construction industry, if the employer only occasionally or intermittently engages in construction industry work it is enough for the employer to be found to be an employer in the construction industry – The Board found it difficult to conceive the work as being anything other than construction and noted that the attempt to argue the work was maintenance failed since the installation of new telecommunication infrastructure to expand the Bell network can no more be characterized as maintenance than the building of a new highway can be characterized as maintenance to the Province's existing highway system – Fifteen months prior to these applications the employees' Association and the employer renegotiated their collective agreement mid-term and entered into a second one (ratified by the employees) without jointly seeking the Board's consent – The Board reviewed its case law under s. 58(3) noting that the statute explicitly requires that private arrangements to terminate a collective agreement early be monitored and supervised by the Board, which would remove any possibility of other employees or trade unions arguing that the prior arrangements of the parties were inadequate – The Board rejected an argument that the section was somehow discretionary, finding that if a collective agreement shall not be terminated by the parties before it ceases to operate without the consent of the Board, and the Board's consent has not been granted (let alone even been sought), the collective agreement cannot be terminated – Accordingly, the second collective agreement was not a bar to the applications – Finally the Board dealt with the Association's late submissions that the matter was federal (given the work was for Bell) and not within the Board's jurisdiction – For a number of reasons the Board refused to entertain this motion, including that the employer knew the facts underlying the constitutional issue and failed to raise them in a timely fashion and no notice was provided to the Attorneys General pursuant to the Board's Rules or the *Courts of Justice Act* – Alternatively, assuming it was wrong not to entertain the constitutional question, the Board found that the matter was within provincial jurisdiction relying on a number of cases that noted a general construction company whether building an airport or a telephone line has only a "casual" (in the words of the jurisprudence) relationship with its federal customers which cannot alter the constitutional authority over its regular line of business – Accordingly, if required, the Board found the activities of Expercom to be subject to provincial regulation

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Construction Industry Grievance – Damages – Jurisdictional Dispute – *Prima Facie* Motion – BACU Local 2 sought damages in a construction industry grievance following a determination in a jurisdictional dispute in which the Board found that Limen had incorrectly assigned work in dispute to BACU Local 31 – PCL had awarded the contract to Limen, who entered into a voluntary recognition agreement with Local 31 to take advantage of the lower wage requirements under that agreement (tile v. brick) – Limen brought a motion to have the grievance dismissed on the grounds that Local 2 had no *prima facie* case for recovering damages – The Board reviewed its case law regarding the awarding of damages arising from an improper assignment of work, affirming such an award should be restricted to instances where the employer's decision was not *bona fide* or was clearly unreasonable – On this motion, the Board held that it must be satisfied that Local 2 "cannot possibly succeed" in its claim for damages – The Board rejected the view that to allow Limen to go scott-free would signal a "free pass" for employers to enter into new agreements when it suited them; similarly, the Board did not fault Limen for entering into the VRA with Local 31 after having secured the tile work, but before the work actually commenced – Ultimately, the Board was not satisfied that it would *never* find an employer liable to pay damages for contravening a collective agreement by entering into a VRA with a second union, thereby creating the basis for a jurisdictional dispute – Motion dismissed; matter continues

LIMEN GROUP LTD.; RE BRICK AND ALLIED CRAFT UNION OF CANADA, LOCAL 2 AND INTERNATIONAL UNION OF BRICKLAYERS AND ALLIED CRAFTWORKERS, LOCAL 2; RE MASONRY INDUSTRY EMPLOYERS' COUNCIL OF ONTARIO/ONTARIO MASONRY CONTRACTORS' ASSOCIATION – BACU BARGAINING COMMITTEE, INTERVENOR NO. 1, LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, ONTARIO PROVINCIAL DISTRICT COUNCIL AND LABOURERS' INTERNATIONAL UNION OF NORTH

AMERICA, LOCAL 506, INTERVENOR NO. 2, BRICK AND ALLIED CRAFT UNION OF CANADA, LOCAL 31 AND INTERNATIONAL UNION OF BRICKLAYERS AND ALLIED CRAFTWORKERS, LOCAL 31, INTERVENOR NO. 3, TERRAZZO, TILE & MARBLE GUILD OF ONTARIO, INC., INTERVENOR NO. 4 498

Damages – Construction Industry Grievance – Jurisdictional Dispute – *Prima Facie* Motion – BACU Local 2 sought damages in a construction industry grievance following a determination in a jurisdictional dispute in which the Board found that Limen had incorrectly assigned work in dispute to BACU Local 31 – PCL had awarded the contract to Limen, who entered into a voluntary recognition agreement with Local 31 to take advantage of the lower wage requirements under that agreement (tile v. brick) – Limen brought a motion to have the grievance dismissed on the grounds that Local 2 had no *prima facie* case for recovering damages – The Board reviewed its case law regarding the awarding of damages arising from an improper assignment of work, affirming such an award should be restricted to instances where the employer's decision was not *bona fide* or was clearly unreasonable – On this motion, the Board held that it must be satisfied that Local 2 "cannot possibly succeed" in its claim for damages – The Board rejected the view that to allow Limen to go scott-free would signal a "free pass" for employers to enter into new agreements when it suited them; similarly, the Board did not fault Limen for entering into the VRA with Local 31 after having secured the tile work, but before the work actually commenced – Ultimately, the Board was not satisfied that it would *never* find an employer liable to pay damages for contravening a collective agreement by entering into a VRA with a second union, thereby creating the basis for a jurisdictional dispute – Motion dismissed; matter continues

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Delay – Jurisdictional Dispute – Practice and Procedure – AMAPCEO and the Crown asserted that ten applications should be dismissed without inquiring into the merits due to excessive delay on the part of OPSEU in grieving the assignment of work to members of the AMAPCEO bargaining unit – The Board determined a bright line test for delay in work assignment disputes: whether the grieving union has challenged the assignment within 30 days of the initial posting of the position, or of the date that the employer provides the union with notice of the creation of a new position, whichever comes first – The Board then applied this test and declined to inquire into eight of the proceedings on the basis of unreasonable delay, confirming the assignment of this work to AMAPCEO's members – The Board will consider two applications on their merits – Matters continue

ONTARIO PUBLIC SERVICE EMPLOYEES UNION; RE THE CROWN IN RIGHT OF ONTARIO AS REPRESENTED BY THE MINISTRY OF GOVERNMENT SERVICES; RE AMAPCEO 520

Employer Support – Bar – Certification – Collective Agreement – Constitutional Law – Construction Industry – Timeliness – On the agreed statement of facts there was no dispute that the employer was involved, from time to time, in the installation of new poles, conduit, fibre optic cable, copper cable in new residential subdivisions and this work included the digging and backfilling of trenches, the laying of conduit, the pulling of cable, the replacing and installing of junction boxes and pedestals and bases and the stringing of lines on poles – The Board noted that even if the principal business of the employer is not in the construction industry, if the employer only occasionally or intermittently engages in construction industry work it is enough for the employer to be found to be an employer in the construction industry – The Board found it difficult to conceive the work as being anything other than construction and noted that the attempt to argue the work was maintenance failed since the installation of new telecommunication infrastructure to expand the Bell network can no more be characterized as maintenance than the building of a new highway can be characterized as maintenance to the Province's existing highway system – Fifteen months prior to these applications the employees' Association and the employer renegotiated their collective agreement mid-term and entered into a second one (ratified by the employees) without jointly seeking the Board's consent – The Board reviewed its case law under s. 58(3) noting that the statute explicitly requires that private arrangements to terminate a collective agreement early be monitored and supervised by the Board, which would remove any possibility of other employees or trade unions arguing that the prior arrangements of the parties were inadequate – The Board rejected an argument that the section was somehow discretionary, finding that if a collective agreement shall not be terminated by the parties before it ceases to operate without the consent of the Board, and the Board's consent has not been granted (let alone even been sought), the collective agreement cannot be terminated – Accordingly, the second collective agreement was not a bar to the applications – Finally the Board dealt with the Association's late submissions that the matter was federal (given the work was for Bell) and not within the Board's jurisdiction – For a number of reasons the Board refused to entertain this motion, including that the employer knew the facts underlying the constitutional issue and failed to raise them in a timely fashion and no notice was provided to the Attorneys General pursuant to the Board's Rules or the *Courts of Justice Act* – Alternatively, assuming it was wrong not to entertain the constitutional question, the Board found that the matter was within provincial jurisdiction relying on a number of cases that noted a general construction company whether building an airport or a telephone line has only a "casual" (in the words of the jurisprudence) relationship with its federal customers which cannot alter the constitutional authority over its regular line of business – Accordingly, if required, the Board found the activities of Expercom to be subject to provincial regulation

EXPERCOM TELECOMMUNICATIONS INC.; RE L.I.U.N.A., LOCAL 24; RE PORT PERRY EMPLOYEES ASSOCIATION 445

Employer Support – Certification – Intimidation and Coercion – *Prima Facie* Motion – Representation Vote – Unfair Labour Practice – The incumbent union, LIUNA Local 1110, lost a certification vote to HOPE Local 2220 by a significant margin – Local 1110 asked the Board to set aside the vote and dismiss the certification application on the basis that what occurred was so harmful that the true wishes of the employees were not disclosed in the vote – On a motion by Local 2220 to dismiss Local 1110's allegations on a *prima facie* basis the Board reviewed its cases dealing with how it will approach allegations of misconduct in the face of a vote which has already been determined, and found that none of the allegations, individually or collectively, would lead the Board to conclude that the true wishes of the employees (in this large and geographically separated bargaining unit) were not reflected in the results of the representation vote which expressed the choice of the employees by over a three to one margin—Accordingly the motion succeeded – Certificate issued

1367178 ONTARIO INC. CARRYING ON THE BUSINESSES KNOWN AS THE CHARTWELL SENIORS HOUSING REIT LONG TERM RESIDENCES, THE WESTMOUNT, THE WOODHAVEN, THE WYNFIELD AND THE WATERFORD; RE HEALTHCARE, OFFICE AND PROFESSIONAL EMPLOYEES UNION, LOCAL 2220; RE UBCJA; RE ONTARIO FEDERATION OF HEALTH CARE WORKERS, LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 1110...... 429

Employment Standards – The applicants sought review of an order to pay wages issued against them on behalf of a live-in caregiver – The Board took the opportunity to reflect on the provisions of the *Employment Standards Act* and in particular the regulation that entitles an employee to payment for holding himself or herself ready for call to work: when no work has been assigned but an employee is not free to leave the workplace or pursue personal endeavours, that employee is working for purposes of the Act, even in the absence of any productivity or benefit for the employer – The Board found the caregiver in this case was entitled to an even greater amount of wages than calculated by the employment standards officer – Order amended upward; application for review dismissed

TIMOTHY LEYS AND KRISTEN THESBERG; RE AGRIPINA LIKHANGA AND DIRECTOR OF EMPLOYMENT STANDARDS.. 540

Grievance – Reference – UFCW and Unilever Canada appointed an Arbitrator to hear grievances relating to vacation entitlement under their collective agreement – UFCW, after repeatedly requesting the decision from the Arbitrator, directly and through the Ministry of Labour, without success, requested that the Minister appoint a different arbitrator pursuant to s. 48(4) of the Act – The Minister asked the Board three questions: whether the Arbitrator had lost jurisdiction; whether the Minister had the power under s 48(11) to order that the Arbitrator had lost jurisdiction; and if either answer was "yes" how the parties must proceed – The Board found the first question did not relate to a power of the Minister under the Act, as it was a legal determination that lay within the jurisdiction of the court – On the second question the Board found the Minister's powers under s 48(11) only relate to the Arbitrator the parties have appointed, giving the Minister power to ensure that a decision is given without undue delay and to address, as appropriate, the Arbitrator's remuneration and expenses – However, the section does not provide the Minister with any power to remove an Arbitrator's jurisdiction (a power that resides with the Superior Court of Justice under the *Judicial Review Procedure Act*) – Advice given

UNILEVER CANADA, A DIVISION OF UNILEVER INC.; RE UNITED FOOD AND COMMERCIAL WORKERS CANADA, LOCAL 175.. 549

Health and Safety – *Occupational Health and Safety Act* – The inspector ordered the School Board to re-inspect a particular school to verify the accuracy of the existing asbestos survey – ETFO appealed the order seeking broader relief relating to all schools in the School Board – The Board followed the jurisprudence which makes it relatively clear that an appeal under s. 61 is not in the nature of an enquiry where all issues are at large, rather the appeal is of a decision or non-decision by the Ministry of Labour – Accordingly the Board found the appeal was restricted to the particular school and the wide relief sought by ETFO for all schools was beyond the jurisdiction of the Board in this appeal – Matter continues

KAWARTHA PINE RIDGE DISTRICT SCHOOL BOARD; RE ELEMENTARY TEACHERS' FEDERATION OF ONTARIO; RE HUGH MCGUIRE 490

Intimidation and Coercion – Certification – Construction Industry – Representation Vote Unfair Labour Practice – The employer alleged that during an organizing campaign certain union organizers told individuals that if they joined the union now they would have to pay $50 to join, whereas if they joined later it would cost a lot more – The Board noted that there is nothing inappropriate with a trade union having a two-tiered initiation fee structure *provided* the lower initiation fee is made available to all employees of the employer at the time of certification and not only to those who signed an application for membership card in advance of the union's certification – Where individuals are told they will be required to pay more later, the Board is unable to determine if the individuals signed the card because they wanted to join the union or because they wanted to avoid having to make a larger payment – After hearing the evidence of five employees, the Board found each witness to be credible and their evidence to be plausible – The union organizer, who was available, did not testify – Accordingly the Board found that the union organizer had made the alleged statements – The Board found the jurisprudence to be clear: in these situations a cloud is cast over the reliability of the membership evidence – Finally, the Board noted that even though only five employees came forward, the Board was unable to determine the extent to which the employees of the employer were aware of the statements made by the organizer, but inferred that since the organizer collected at least 25% of the cards, the statements were more than likely made to more than five individuals – In these circumstances, given the reliability of the membership evidence was in doubt, the Board found it appropriate to order another representation vote – Application granted; matter continues

GRAHAM BROS. CONSTRUCTION LIMITED; RE L.I.U.N.A. ONTARIO PROVINCIAL DISTRICT COUNCIL; RE I.U.O.E., LOCAL 793 471

Intimidation and Coercion – Certification – Employer Support – *Prima Facie* Motion – Representation Vote – Unfair Labour Practice – The incumbent union, LIUNA Local 1110, lost a certification vote to HOPE Local 2220 by a significant margin – Local 1110 asked the Board to set aside the vote and dismiss the certification application on the basis that what occurred was so harmful that the true wishes of the employees were not disclosed in the vote – On a motion by Local 2220 to dismiss Local 1110's allegations on a *prima facie* basis the Board reviewed its cases dealing with how it will approach allegations of misconduct in the face of a vote which has already been determined, and found that none of the allegations, individually or collectively, would lead the Board to conclude that the true wishes of the employees (in this large and geographically separated bargaining unit) were not reflected in the results of the representation vote which expressed the choice of the employees by over a three to one margin—Accordingly the motion succeeded – Certificate issued

1367178 ONTARIO INC. CARRYING ON THE BUSINESSES KNOWN AS THE CHARTWELL SENIORS HOUSING REIT LONG TERM RESIDENCES, THE WESTMOUNT, THE WOODHAVEN, THE WYNFIELD AND THE WATERFORD; RE HEALTHCARE, OFFICE AND PROFESSIONAL EMPLOYEES UNION, LOCAL 2220; RE UBCJA; RE ONTARIO FEDERATION OF HEALTH CARE WORKERS, LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 1110...... 429

Judicial Review – *Charter of Rights and Freedoms* – Construction Industry – Non-Construction Employer – The Board concluded ([2009] OLRB Rep. Nov/Dec 826) that the declarations required by s. 127.2 when an employer is found to be a non-construction employer substantially interfered with the process of collective bargaining, contrary to s. 2(d) of the *Charter*, and the infringement could not be saved by s. 1 – On judicial review, the Divisional Court found no such infringement ([2010 OLRB Rep. Jan/Feb 166) – On appeal, the Court of Appeal affirmed that freedom of association is enjoyed by individuals not unions – There was no substantial interference with members' s. 2(d) rights – A s. 127.2 declaration would not make it impossible for the unions' members to meaningfully exercise the freedom to associate – Appeal dismissed

INDEPENDENT ELECTRICITY SYSTEM OPERATOR; RE CANADIAN UNION OF SKILLED WORKERS, LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, ONTARIO PROVINCIAL DISTRICT COUNCIL, LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 1059, OLRB AND ATTORNEY GENERAL OF ONTARIO, RE PROVINCIAL BUILDING AND CONSTRUCTION TRADES COUNCIL OF ONTARIO AND GREATER ESSEX COUNTY DISTRICT SCHOOL BOARD; OLRB 553

Jurisdictional Dispute – Construction Industry Grievance – Damages – *Prima Facie* Motion – BACU Local 2 sought damages in a construction industry grievance following a determination in a jurisdictional dispute in which the Board found that Limen had incorrectly assigned work in dispute to BACU Local 31 – PCL had awarded the contract to Limen, who entered into a voluntary recognition agreement with Local 31 to take advantage of the lower wage requirements under that agreement (tile v. brick) – Limen brought a motion to have the grievance dismissed on the grounds that Local 2 had no *prima facie* case for recovering damages – The Board reviewed its case law regarding the awarding of damages arising from an improper assignment of work, affirming such an award should be restricted to instances where the employer's decision was not *bona fide* or was clearly unreasonable – On this motion, the Board held that it must be satisfied that Local 2 "cannot possibly succeed" in its claim for damages – The Board rejected the view that to allow Limen to go scott-free would signal a "free pass" for employers to enter into new agreements when it suited them; similarly, the Board did not fault Limen for entering into the VRA with Local 31 after having secured the tile work, but before the work actually commenced – Ultimately, the Board was not satisfied that it would *never* find an employer liable to pay damages for contravening a collective agreement by entering into a VRA with a second union, thereby creating the basis for a jurisdictional dispute – Motion dismissed; matter continues

LIMEN GROUP LTD.; RE BRICK AND ALLIED CRAFT UNION OF CANADA, LOCAL 2 AND INTERNATIONAL UNION OF BRICKLAYERS AND ALLIED CRAFTWORKERS, LOCAL 2; RE MASONRY INDUSTRY EMPLOYERS' COUNCIL OF ONTARIO/ONTARIO MASONRY CONTRACTORS' ASSOCIATION – BACU BARGAINING COMMITTEE, INTERVENOR NO. 1, LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, ONTARIO PROVINCIAL DISTRICT COUNCIL AND LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 506, INTERVENOR NO. 2, BRICK AND ALLIED CRAFT UNION OF CANADA, LOCAL 31 AND INTERNATIONAL UNION OF BRICKLAYERS AND ALLIED CRAFTWORKERS, LOCAL 31, INTERVENOR NO. 3, TERRAZZO, TILE & MARBLE GUILD OF ONTARIO, INC., INTERVENOR NO. 4 498

Jurisdictional Dispute – Delay – Practice and Procedure – AMAPCEO and the Crown asserted that ten applications should be dismissed without inquiring into the merits due to excessive delay on the part of OPSEU in grieving the assignment of work to members of the AMAPCEO bargaining unit – The Board determined a bright line test for delay in work assignment disputes: whether the grieving union has challenged the assignment within 30 days of the initial posting of the position, or of the date that the employer provides the union with notice of the creation of a new position, whichever comes first – The Board then applied this test and declined to inquire into eight of the proceedings on the basis of unreasonable delay, confirming the assignment of this work to AMAPCEO's members – The Board will consider two applications on their merits – Matters continue

ONTARIO PUBLIC SERVICE EMPLOYEES UNION; RE THE CROWN IN RIGHT OF ONTARIO AS REPRESENTED BY THE MINISTRY OF GOVERNMENT SERVICES; RE AMAPCEO.. 520

Non-Construction Employer – *Charter of Rights and Freedoms* – Construction Industry – Judicial Review – The Board concluded ([2009] OLRB Rep. Nov/Dec 826) that the declarations required by s. 127.2 when an employer is found to be a non-construction employer substantially interfered with the process of collective bargaining, contrary to s. 2(d) of the *Charter*, and the infringement could not be saved by s. 1 – On judicial review, the Divisional Court found no such infringement ([2010 OLRB Rep. Jan/Feb 166) – On appeal, the Court of Appeal affirmed that freedom of association is enjoyed by individuals not unions – There was no substantial interference with members' s. 2(d) rights – A s. 127.2 declaration would not make it impossible for the unions' members to meaningfully exercise the freedom to associate – Appeal dismissed

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KAWARTHA PINE RIDGE DISTRICT SCHOOL BOARD; RE ELEMENTARY TEACHERS' FEDERATION OF ONTARIO; RE HUGH MCGUIRE 490

Practice and Procedure – Delay – Jurisdictional Dispute – AMAPCEO and the Crown asserted that ten applications should be dismissed without inquiring into the merits due to excessive delay on the part of OPSEU in grieving the assignment of work to members of the AMAPCEO bargaining unit – The Board determined a bright line test for delay in work assignment disputes: whether the grieving union has challenged the assignment within 30 days of the initial posting of the position, or of the date that the employer provides the union with notice of the creation of a new position, whichever comes first – The Board then applied this test and declined to inquire into eight of the proceedings on the basis of unreasonable delay, confirming the assignment of this work to AMAPCEO's members – The Board will consider two applications on their merits – Matters continue

ONTARIO PUBLIC SERVICE EMPLOYEES UNION; RE THE CROWN IN RIGHT OF ONTARIO AS REPRESENTED BY THE MINISTRY OF GOVERNMENT SERVICES; RE AMAPCEO.. 520

Prima Facie Motion – Certification – Employer Support – Intimidation and Coercion – Representation Vote – Unfair Labour Practice – The incumbent union, LIUNA Local 1110, lost a certification vote to HOPE Local 2220 by a significant margin – Local 1110 asked the Board to set aside the vote and dismiss the certification application on the basis that what occurred was so harmful that the true wishes of the employees were not disclosed in the vote – On a motion by Local 2220 to dismiss Local 1110's allegations on a *prima facie* basis the Board reviewed its cases dealing with how it will approach allegations of misconduct in the face of a vote which has already been determined, and found that none of the allegations, individually or collectively, would lead the Board to conclude that the true wishes of the employees (in this large and geographically separated bargaining unit) were not reflected in the results of the representation vote which expressed the choice of the employees by over a three to one margin—Accordingly the motion succeeded – Certificate issued

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LIMEN GROUP LTD.; RE BRICK AND ALLIED CRAFT UNION OF CANADA, LOCAL 2 AND INTERNATIONAL UNION OF BRICKLAYERS AND ALLIED

CRAFTWORKERS, LOCAL 2; RE MASONRY INDUSTRY EMPLOYERS' COUNCIL OF ONTARIO/ONTARIO MASONRY CONTRACTORS' ASSOCIATION – BACU BARGAINING COMMITTEE, INTERVENOR NO. 1, LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, ONTARIO PROVINCIAL DISTRICT COUNCIL AND LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 506, INTERVENOR NO. 2, BRICK AND ALLIED CRAFT UNION OF CANADA, LOCAL 31 AND INTERNATIONAL UNION OF BRICKLAYERS AND ALLIED CRAFTWORKERS, LOCAL 31, INTERVENOR NO. 3, TERRAZZO, TILE & MARBLE GUILD OF ONTARIO, INC., INTERVENOR NO. 4 498

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UNILEVER CANADA, A DIVISION OF UNILEVER INC.; RE UNITED FOOD AND COMMERCIAL WORKERS CANADA, LOCAL 175 549

Representation Vote – Certification – Construction Industry – Intimidation and Coercion – Unfair Labour Practice – The employer alleged that during an organizing campaign certain union organizers told individuals that if they joined the union now they would have to pay $50 to join, whereas if they joined later it would cost a lot more – The Board noted that there is nothing inappropriate with a trade union having a two-tiered initiation fee structure *provided* the lower initiation fee is made available to all employees of the employer at the time of certification and not only to those who signed an application for membership card in advance of the union's certification – Where individuals are told they will be required to pay more later, the Board is unable to determine if the individuals signed the card because they wanted to join the union or because they wanted to avoid having to make a larger payment – After hearing the evidence of five employees, the Board found each witness to be credible and their evidence to be plausible – The union organizer, who was available, did not testify – Accordingly the Board found that the union organizer had made the alleged statements – The Board found the jurisprudence to be clear: in these situations a cloud is cast over the reliability of the membership evidence – Finally, the Board noted that even though only five employees came forward, the Board was unable to determine the extent to which the employees of the employer were aware of the statements made by the organizer, but inferred that since the organizer collected at least 25% of the cards, the statements were more than likely made to more than five individuals – In these circumstances, given the reliability of the membership evidence was in doubt, the Board found it appropriate to order another representation vote – Application granted; matter continues

GRAHAM BROS. CONSTRUCTION LIMITED; RE L.I.U.N.A. ONTARIO PROVINCIAL DISTRICT COUNCIL; RE I.U.O.E., LOCAL 793 471

Representation Vote – Certification – Employer Support – Intimidation and Coercion – *Prima Facie* Motion – Unfair Labour Practice – The incumbent union, LIUNA Local 1110, lost a certification vote to HOPE Local 2220 by a significant margin – Local 1110 asked the Board to set aside the vote and dismiss the certification application on the basis that what occurred was so harmful that the true wishes of the employees were not disclosed in the vote – On a motion by Local 2220 to dismiss Local 1110's allegations on a *prima facie* basis the Board reviewed its cases dealing with how it will approach allegations of misconduct in the face of a vote which has already been determined, and found that none of the allegations, individually or collectively, would lead the Board to conclude that the true wishes of the employees (in this large and geographically separated bargaining unit) were not reflected in the results of the representation vote which expressed the choice of the employees by over a three to one margin—Accordingly the motion succeeded – Certificate issued

1367178 ONTARIO INC. CARRYING ON THE BUSINESSES KNOWN AS THE CHARTWELL SENIORS HOUSING REIT LONG TERM RESIDENCES, THE WESTMOUNT, THE WOODHAVEN, THE WYNFIELD AND THE WATERFORD; RE HEALTHCARE, OFFICE AND PROFESSIONAL EMPLOYEES UNION, LOCAL 2220; RE UBCJA; RE ONTARIO FEDERATION OF HEALTH CARE WORKERS, LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 1110...... 429

Timeliness – Bar – Certification – Collective Agreement – Constitutional Law – Construction Industry – Employer Support – On the agreed statement of facts there was no dispute that the employer was involved, from time to time, in the installation of new poles, conduit, fibre optic cable, copper cable in new residential subdivisions and this work included the digging and backfilling of trenches, the laying of conduit, the pulling of cable, the replacing and installing of junction boxes and pedestals and bases and the stringing of lines on poles – The Board noted that even if the principal business of the employer is not in the construction industry, if the employer only occasionally or intermittently engages in construction industry work it is enough for the employer to be found to be an employer in the construction industry – The Board found it difficult to conceive the work as being anything other than construction and noted that the attempt to argue the work was maintenance failed since the installation of new telecommunication infrastructure to expand the Bell network can no more be characterized as maintenance than the building of a new highway can be characterized as maintenance to the Province's existing highway system – Fifteen months prior to these applications the employees' Association and the employer renegotiated their collective agreement mid-term and entered into a second one (ratified by the employees) without jointly seeking the Board's consent – The Board reviewed its case law under s. 58(3) noting that the statute explicitly requires that private arrangements to terminate a collective agreement early be monitored and supervised by the Board, which would remove any possibility of other employees or trade unions arguing that the prior arrangements of the parties were inadequate – The Board rejected an argument that the section was somehow discretionary, finding that if a collective agreement shall not be terminated by the parties before it ceases to operate without the consent of the Board, and the Board's consent has not been granted (let alone even been sought), the collective agreement cannot be terminated – Accordingly, the second collective agreement was not a bar to the applications – Finally the Board dealt with the Association's late submissions that the matter was federal (given the work was for Bell) and not within the Board's jurisdiction – For a number of reasons the Board refused to entertain this motion, including that the employer knew the facts underlying the constitutional issue and failed to raise them in a timely fashion and no notice was provided to the Attorneys General pursuant to the Board's Rules or the *Courts of Justice Act* – Alternatively, assuming it was wrong not to entertain the constitutional question, the Board found that the matter was within provincial jurisdiction relying on a number of cases that noted a general construction company whether building an airport or a telephone line has only a "casual" (in the words of the jurisprudence) relationship with its federal customers which cannot alter the constitutional authority over its regular line of business – Accordingly, if required, the Board found the activities of Expercom to be subject to provincial regulation

EXPERCOM TELECOMMUNICATIONS INC.; RE L.I.U.N.A., LOCAL 24; RE PORT PERRY EMPLOYEES ASSOCIATION 445

Unfair Labour Practice – Certification – Construction Industry – Intimidation and Coercion – Representation Vote – The employer alleged that during an organizing campaign certain union organizers told individuals that if they joined the union now they would have to pay $50 to join, whereas if they joined later it would cost a lot more – The Board noted that there is nothing inappropriate with a trade union having a two-tiered initiation fee structure *provided* the lower initiation fee is made available to all employees of the employer at the time of certification and not only to those who signed an application for membership card in advance of the union's certification – Where individuals are told they will be required to pay more later, the Board is unable to determine if the individuals signed the card because they wanted to join the union or because they wanted to avoid having to make a larger payment – After hearing the evidence of five employees, the Board found each witness to be credible and their evidence to be plausible – The union organizer, who was available, did not testify – Accordingly the Board found that the union organizer had made the alleged statements – The Board found the jurisprudence to be clear: in these situations a cloud is cast over the reliability of the membership evidence – Finally, the Board noted that even though only five employees came forward, the Board was unable to determine the extent to which the employees of the employer were aware of the statements made by the organizer, but inferred that since the organizer collected at least 25% of the cards, the statements were more than likely made to more than five individuals – In these circumstances, given the reliability of the membership evidence was in doubt, the Board found it appropriate to order another representation vote – Application granted; matter continues

GRAHAM BROS. CONSTRUCTION LIMITED; RE L.I.U.N.A, ONTARIO PROVINCIAL DISTRICT COUNCIL; RE I.U.O.E., LOCAL 793 471

Unfair Labour Practice – Certification – Employer Support – Intimidation and Coercion – *Prima Facie* Motion – Representation Vote – The incumbent union, LIUNA Local 1110, lost a certification vote to HOPE Local 2220 by a significant margin – Local 1110 asked the Board to set aside the vote and dismiss the certification application on the basis that what occurred was so harmful that the true wishes of the employees were not disclosed in the vote – On a motion by Local 2220 to dismiss Local 1110's allegations on a *prima facie* basis the Board reviewed its cases dealing with how it will approach allegations of misconduct in the face of a vote which has already been determined, and found that none of the allegations, individually or collectively, would lead the Board to conclude that the true wishes of the employees (in this large and geographically separated bargaining unit) were not reflected in the results of the representation vote which expressed the choice of the employees by over a three to one margin—Accordingly the motion succeeded – Certificate issued

1367178 Ontario Inc. carrying on the businesses known as The Chartwell Seniors Housing REIT Long Term Residences, The Westmount, The Woodhaven, The Wynfield and The Waterford; RE Healthcare, Office and Professional Employees Union, Local 2220; RE UBCJA; RE Ontario Federation of Health Care Workers, Labourers' International Union of North America, Local 1110 429

2888-11-R; 2898-11-U Healthcare, Office and Professional Employees Union, Local 2220, UBCJA, Applicant v. **1367178 Ontario Inc. carrying on the businesses known as The Chartwell Seniors Housing REIT Long Term Residences, The Westmount, The Woodhaven, The Wynfield and The Waterford**, Responding Parties v. Ontario Federation of Health Care Workers, Labourers' International Union of North America, Local 1110, Intervenor; Ontario Federation of Health Care Workers, Labourers' International Union of North America, Local 1110, Applicant v. 1367178 Ontario Inc. c.o.b. as: The Westmount - 200 David Bergey Drive, Kitchener Ontario; The Wynfield - 451 Woodmount Drive, Oshawa Ontario; The Woodhaven - 380 Church Street, Markham, Ontario, The Waterford - 2240 Baronwood Drive, Oakville, Ontario Responding Parties; Healthcare, Office and Professional Employees Union, Local 2220, UBCJA, Intervenor.

Certification – Employer Support – Intimidation and Coercion – Prima Facie Motion – Representation Vote – Unfair Labour Practice – The incumbent union, LIUNA Local 1110, lost a certification vote to HOPE Local 2220 by a significant margin – Local 1110 asked the Board to set aside the vote and dismiss the certification application on the basis that what occurred was so harmful that the true wishes of the employees were not disclosed in the vote – On a motion by Local 2220 to dismiss Local 1110's allegations on a prima facie basis the Board reviewed its cases dealing with how it will approach allegations of misconduct in the face of a vote which has already been determined, and found that none of the allegations, individually or collectively, would lead the Board to conclude that the true wishes of the employees (in this large and geographically separated bargaining unit) were not reflected in the results of the representation vote which expressed the choice of the employees by over a three to one margin—Accordingly the motion succeeded – Certificate issued

BEFORE: *Edward T. McDermott*, Vice-Chair, and Board Members *R. O'Connor* and *C. Phillips*.

APPEARANCES: *Mark J. Lewis*, appearing for Healthcare, Office and Professional Employees Union, Local 2220, UBCJA; *James Robbins*, appearing for Ontario Federation of Health Care Workers, Labourers' International Union of North America Local 1110; and *Steven Wilson*, appearing for 1367178 Ontario Inc. c.o.b. as The Chartwell Seniors Housing REIT Long Term Residences, The Westmount, The Woodhaven, The Wynfield, and The Waterford.

DECISION OF THE BOARD: June 21, 2012

1. This is the continuation of an application for certification under the provisions of the Labour Relations Act, 1995, S.O. 1995, c.1, as amended (the "Act") in which the applicant in that proceeding (Board File No. 2888-11-R) Healthcare, Office and Professional Employees Union, Local 220, UBCJA ("HOPE Local 2220") seeks to displace the Ontario Federation of Healthcare Workers, Labourers' International Union of North America, Local 1110 ("LIUNA Local 1110" or "the incumbent union") as the certified bargaining representative for employees at four separate operations of the responding employer ("Chartwell"). The Board also has before it an unfair labour practice complaint filed by LIUNA Local 1110 against Chartwell in which HOPE Local 2220 has joined as an intervenor party.

Background

2. The incumbent union was party to a collective agreement with Chartwell covering its employees at four separate long-term care homes collectively known as the "W Homes". As can be seen from the following description of the bargaining unit, these homes are located in different municipalities which are geographically separated by considerable distances. The particular description of the unit in the collective agreement is as follows:

> 2.01 The Employer recognizes the Union as the exclusive bargaining agent of all its employees of 1367178 Ontario Inc. c.o.b. as: The Westmount – 200 David Bergey Drive, Kitchener, Ontario The Wynfield – 451 Woodmount Drive, Oshawa, Ontario; The Woodhaven – 380 Church Street, Markham, Ontario; The Waterford, 2240 Baronwood Drive, Oakville, Ontario; Save and except supervisors and persons above the rank of supervisor, Nurse Managers, Educator, Co-ordinators, Registered and Graduate Nurses, Recreation Managers, Volunteer Co-ordinator, Maintenance, Office and clerical staff.

The term of the collective agreement is from January 6, 2009 until December 31, 2011.

3. LIUNA Local 1110 is a local of the Labourers' International Union of North America with its offices being located in Hamilton, Ontario. The terms of the collective agreement were administered through its acting business manager, Paula Randazzo and a number of other staff members and stewards.

4. As a result of certain differences that arose between Ms Randazzo and the other staff members on the one hand and LIUNA on the other, Ms Randazzo embarked upon discussions with representatives of the Carpenters union with a view to forming a new Carpenters' local which initially would make application for certification to displace Labourers' Local 1110 at the four W Homes. The collective agreement for such homes had a terminal date of December 31, 2011.

5. Accordingly, on or about November 5, 2011, Ms Randazzo and three other staff members either resigned and/or were terminated from their employment with LIUNA Local 1110 and shortly thereafter announced that a newly affiliated local of the Carpenters' union had been formed which local is known by the acronym, HOPE.

6. In a letter dated November 8, 2011, Ms Randazzo advised the bargaining unit employees of the W Homes that she was the President of HOPE Local 2220 and a sign-up campaign had been commenced with a view to obtaining a union representation vote and ultimate certification of HOPE as the bargaining representative of the eligible employees in the W Homes. In this letter, Ms Randazzo urged all employees to support the new union and sign up into membership with it.

7. At or about the same time, in addition to the resignation of the staff members from Local 1110, a number of stewards of LIUNA Local 1110 also either resigned and/or were terminated from their position of steward as a result of their support for the new local.

8. Over the course of the next few weeks, the supporters of HOPE Local 2220 embarked upon a sign-up campaign across the four homes and the incumbent union attempted to resist those efforts and retain the support of its membership.

9. By application dated November 17, 2011, HOPE Local 2220 filed an application under section 96 of the Act against Chartwell, asserting, *inter alia*, that it was assisting the Labourers' in their efforts to turn aside its organizing campaign by failing to restrict the access of the representatives and officials of

Local 1110 to the facilities and their interaction with the employees in the bargaining unit. HOPE Local 2220 requested that the Board restrict LIUNA Local 1110's access to the facilities and the employees and to otherwise take appropriate action to ensure that HOPE Local 2220 received the same access as was allegedly being afforded to LIUNA Local 1110 by the employer.

10. On December 1, 2011, LIUNA Local 1110 filed the instant section 96 application in which it also asserted, *inter alia*, that the employer was providing support to HOPE Local 2220 by failing to police its organizing activities and allowing the former stewards to campaign in the premises after their shift hours as well as, on one occasion (Saturday, November 26, 2011), allowing Ms Randazzo to campaign in the lobby of the Waterford Home. LIUNA Local 1110 also asserted that its representatives were improperly being denied access to the facilities and the employees that they had previously enjoyed. The complaint also indicates that the new acting business manager of Local 1110 (Ms Nancy Guzzo) negotiated an access protocol with Chartwell allowing LIUNA Local 1110 to appoint representatives to conduct the business of stewards and affording them limited access to the premises. This protocol was arrived at on November 14 and 15, 2011 with Ms Karen Dolan, Vice President of Labour Relations with Chartwell. LIUNA Local 1110 then asserts, however, that the protocol was subsequently altered when on November 25, 2011, Ms Dolan advised Ms Guzzo by e-mail in the following terms:

> As of Monday, we will be denying you access to the homes except if you are having a membership meeting, grievance meeting, labour management meeting or investigation into a specific issue related to grievances.

In essence, therefore, both of the competing unions were taking the position that Chartwell was affording improper access to one union while restricting the ability of the other union to have access to the facilities and the employees.

11. In the meantime, HOPE Local 2220 determined that it had the appropriate level of support to file an application for certification and proceed to a vote and accordingly did so on November 30, 2011. The application indicated that the applicant believed that there were some 880 employees in the bargaining unit ranging between 210 employees in each of the Waterford and Wynfield facilities; 220 in the Westmount facility and a further 240 in the Woodhaven facility. Chartwell, in its response to the application, indicated that there were 827 employees in the proposed bargaining unit. As a result of representations by LIUNA Local 1110 to add certain employees, the eligible voters' list was elevated to 906 with some of the additions being subject to challenge if they voted.

12. LIUNA Local 1110 intervened in the certification application and submitted that the application should be dismissed on a number of grounds including the fact that the membership evidence was obtained fraudulently; that the applicant does not have status as a trade union; and that the application is based on improper employer support and interference.

13. As there was no dispute about the configuration of the bargaining unit (which mirrored the existing bargaining unit set forth in the terms of the collective agreement), the Board proceeded to settle the arrangements for the vote to be held on December 7, 2011 at all of the four facilities.

14. The Board then reviewed the membership evidence filed on behalf of the applicant and by decision dated December 5, 2011, found that the applicant (HOPE Local 2220) had established sufficient membership support in the proposed bargaining unit for the purposes of obtaining a representation vote.

15. The vote was accordingly held on December 7, 2011 in accordance with the procedures of the Board resulting in a tally of 365 ballots in favour of the applicant and 103 ballots in favour of LIUNA

Local 1110 with three additional cast ballots being segregated and two ballots being spoiled. The margin of victory was therefore clearly significant.

16. Following the conduct of the vote, on December 14, 2011 HOPE Local 2220 filed a response to the various complaints filed by LIUNA Local 1110 and requested full particulars of all such allegations. That request was subsequently reiterated in a letter dated January 4, 2012. Similarly, the employer also requested particulars of the allegations against it and reiterated that request in subsequent correspondence to the Board.

17. After the announcement of the results of the vote, HOPE Local 2220 sought the leave of the Board to withdraw its section 96 application against Chartwell relating to access to the Homes.

Status of HOPE Local 2220 as a Trade Union

18. One of the issues raised by LIUNA Local 1110 in its response to the application for certification was that the applicant did not hold status as a trade union. As the Board's records did not indicate that the applicant had previously established trade union status before it, the Board proceeded to schedule a hearing for the purposes of determining whether the applicant qualified as a trade union pursuant to the provisions of the Act.

19. That matter came before the Board for hearing on January 9, 2012 at which time the evidence and arguments of all of the parties regarding that issue were received by the Board.

20. By decision dated February 7, 2012, the Board found that HOPE Local 2220 had established itself as a trade union within the meaning of the Act.

Additional Issues Arising Out of the Vote

21. Following the conduct of the vote on December 7, 2011 and the announcement of the results, LIUNA Local 1110 alleged that on the day of the vote Chartwell gave access to their worksites at Woodhaven and Westmount to representatives of the applicant so that they were visible in public spaces such as the front lobby and areas outside of the rooms in which voting was taking place. The four individuals identified as being given such access were listed in LIUNA Local 1110's correspondence of December 9 and 14, 2011. From the lists filed in the response to the application for certification, at least three of the four individuals were listed as employees located at the Westmount and Woodhaven homes. There was no assertion by LIUNA Local 1110 that any of these individuals were not employees of Chartwell normally situated at the homes in question. LIUNA Local 1110 does assert that its representatives were not permitted access to the work sites on the voting day.

Board Hearing April 12, 2011

22. On the return of the hearing before the Board on April 12, 2011 for the purpose of determining the outstanding matters arising under the certification application and the section 96 complaint, counsel for HOPE Local 2220 brought a motion before the Board that the remaining issues set forth in the complaint should, insofar as they impact upon the certification application, be dismissed for failing to disclose a *prima facie* case for the orders or remedies requested. The employer, Chartwell, which is the respondent to the application for certification, joins in such application on the part of HOPE Local 2220. In response to enquiries from the Board, LIUNA Local 1110 acknowledged that if such a motion by HOPE Local 2220 were to be successful, there would be no further labour relations purpose in proceeding with the separate section 96 complaint against the employer.

23. In considering such a motion by HOPE Local 2220, the Board must have regard to the provisions of its Rules and prior jurisprudence relating to the circumstances under which such Rules will be applied. Rule 39.1 of the Board's Rules provides as follows:

> 39.1 Where the Board considers that an application does not make out a case for the orders or remedies requested, even if all of the facts stated in the application are assumed to be true, the Board may dismiss the application without a hearing or consultation. In its decision, the Board will set out its reasons.

24. In the case of *Sunrise of Unionville* 2007 CanLII 4715 (ON LRB), the Board enunciated its general approach to the application of this rule in the following terms:

> 10. In reviewing pleadings to assess whether they state a *prima facie* case of a contravention of the *Labour Relations Act, 1995* ("the Act"), the Board has regard only to the facts asserted or accepted by the party alleging a contravention. The Board does not on a *prima facie* review assess the probability that the alleger's assertions of fact will be proven. The Board also does not dismiss an application where the circumstances it raises are novel or unique. In essence, the Board's approach is that the application will be dismissed only if there is no reasonable likelihood that a contravention would be found based on the facts asserted. See *Robbins*, [2001] O.L.R.D. No. 273 and *Baycrest Centre for Geriatric Care*, [2003] O.L.R.D. No. 840, and cases cited therein.

25. It is against this backdrop that the Board must assess the remaining matters about which LIUNA Local 1110 complains and seeks, as a consequence, to have the results of the secret ballot vote (at which some 473 employees cast ballots) set aside notwithstanding almost 80% of the uncontested ballots were cast in favour of HOPE Local 2220. It should be noted that LIUNA Local 1110 does not seek to have a re-vote ordered by the Board but rather urges the Board to set aside the results of the vote and dismiss the application for certification on the basis that what has occurred here was so harmful to the process that the true wishes of the employees could not be disclosed by a further test at the ballot box.

26. The Board has in a number of cases indicated how it will approach allegations of misconduct under the Act in the face of a vote which has already been conducted and determined. In *Sunrise of Unionville*, the Board stated as follows:

> 14. The Board has a long history of interpreting section 76 and similar predecessor provisions. The language is broad enough to capture the conduct of rank and file employees in the bargaining unit ("no person"), yet the Board has rarely found such individuals to have contravened section 76 of the Act. Essentially, the Board has found that the second element of a section 76 contravention is not made out in these instances. The Board has recognized that emotions among employees may run high during an organizing campaign and that strong, or even intemperate, opinions may be expressed to one another by individuals in the proposed bargaining unit. Where, as here, the allegation is that the conduct complained of coerced or intimidated individuals into casting a ballot other than in accordance with their true wishes, and the request is that the results of the representation vote be set aside, the Board has consistently stated that it places great store in the critical faculties of the voters and the secrecy of the ballot box, such that the alleged misconduct must be "serious and pervasive" to warrant the relief requested. These principles are usefully summarized in *Concorde Metal*

> *Stampings*, [1987] OLRB Rep. Jan. 34 (cited with approval in *Atlas Specialty Steels*, [1991] OLRB Rep. June 728):
>
> > 30. ... However, where the allegations concern friction between rank and file employees, the elective administration of the Act and the achievement of its objectives requires a recognition of the fact that for some employees, union representation can be a volatile and emotional issue. Debate may degenerate into bad feelings, ruined friendship and recriminations. While the Board always has the authority to set aside a representation vote and order a new one, that is not a neutral decision, nor one which should be lightly taken and in our view should not be taken unless the occurrences are so serious and pervasive as to render improbable a reliable expression of employee wishes despite the sanctity of the ballot box.
>
> ...
>
> 17. As indicated above, the Board assesses the likely impact of allegedly intimidatory or coercive conduct on a reasonable and well-informed (or capable of informing himself or herself) voter possessed of critical faculties, rather than how it may affect a gullible voter. The Board also takes account of how notorious or widespread the alleged conduct – that is, how many voters may have been affected by it.

27. In *Carillion Canada Services Inc.* 2011 CanLII 60261 (ON LRB), the Board indicated its general approach to these issues in the following terms:

> 63. The current statute with respect to applications for certification by non-construction unions affords primacy to representation votes. However, it is alleged, not infrequently, that employer or other misconduct should cause the Board to reject a vote result. Accordingly, Board jurisprudence begins with the presumption that the true wishes of employees are disclosed by the results of representation votes but explores exceptions to the rule.
>
> 64. Where misconduct or unfair labour practices are alleged, the question becomes whether or not the improper conduct could be sufficient to permit the Board to draw the conclusion that it prevented employees from expressing their true wishes. The question is not merely whether or not some misconduct has occurred. Rather, the Board is primarily concerned with whether or not the alleged misconduct could reasonably be said to have reached a level which would cause the Board to distrust the ballot outcome.
>
> 65. The following relevant cases among others were provided by HRRH counsel in this regard: *Coca-Cola Bottling Co.*, [2004] OLRB Rep. January/February 23; *Council scolaire de district des écoles catholiques du sud-ouest*, [2000] OLRB Rep. January/February 22; *Northwest Hospital Corp.*, [1999] OLRB Rep. July/August 666; *Coehlo*, [2004] OLRB Rep. March/April 193.
>
> 66. In *Northwest Hospital* at paragraph 10 it was said:
>
> > The sole issue for the Board in this sort of application is whether or not the results of the vote reflect the true wishes of the majority of employees in the bargaining unit. Whether any party has violated the terms of the Board's order setting up the vote or indeed any sections of the Act or the LRA, is relevant only insofar as such violations may

> establish that the results of the vote do not reflect the true wishes of employees. I agree with counsel for SEIU that this is an objective test. It is not based on the subjective views of the most gullible or firm voter, but on an assessment of whether the events which occurred would objectively lead to the conclusion that a reasonable employee would be unable to express his or her true wishes in a secret ballot because of these events ...

67. In *Conseil scolaire* at paragraph 29 it was said:

> In *Northwest GTA Hospital Corporation* the Board set out two important principles; that where the remedy is the holding of a new representation vote, the sole issue to be determined is whether the conduct complained of prevented employees from expressing their true wishes. The second important principle set out (particularly cogently in the reconsideration decision) is that conduct which influences decision-making is not the same as conduct which overwhelms decision-making, and it is only conduct which overwhelms decision-making that will lead the Board to conclude that the vote did not represent the true wishes of employees.

68. We accept those principles and now turn to their application in this case.

69. This type of case is often addressed by the Board in a 'no *prima facie* case' motion. In such situations, the Board treats the factual allegations made as being true and provable. In the instant case therefore, the Board has accepted the SEIU pleadings as being true and provable.

70. We do note, however, the admonition which was given all of the parties in the August 12, 2011 decision cited in paragraph 4 above; that is, they were required to plead all of the facts upon which they were going to rely. As well, in an earlier *Humber River Regional Hospital* decision dated May 24, 2011 in Board File No. 3986-10-U, 2011 CanLII 28904, the Board had previously stated that "bald allegations" of preference by the employer for OWU would be insufficient.

71. In this vein, we are obliged to observe that, while the allegations made by SEIU were advanced in strong language, the pleadings concerning both Osler and HRRH were lacking in particularity in significant respects. We have not given credence to "bald allegations" in considering this 'no *prima facie* case' motion.

72. In order to appreciate the conclusion which we have reached it is also important to recognize the size of the bargaining units in issue and that employees work in many separate areas given the size and locations of the hospitals' premises.

73. The voters' lists at Osler contained the names of more than 275 persons in both of the applications for certification and, in each of the votes, OWU was successful by a significant margin. At HRRH there were over 300 persons on the voters' list and OWU was equally successful. Osler and HRRH are major hospitals with large bargaining units. Several polling places were required given the location of employees. These were not situations where egregious conduct occurred in small workplaces to the

> certain knowledge of many or all employees, or, where such knowledge might reasonably be presumed.
>
> 74. We observe as well that the applications in question are displacement applications where SEIU has been the incumbent for some time. These are not cases where employees were unfamiliar with union representation, or facing loss of representation, or where they might have been said to be more vulnerable than usual to alleged employer influence or preference. We also accept that any democratic election process must have tolerance for hard fought campaigning, which credits voters with the ability to assess competing claims and partisan activity.

28. It is against this backdrop that we must review and consider the implications of the remaining factual allegations filed by LIUNA Local 1110 (which must be accepted as true and provable for the purposes of the motion asserting that no *prima facie* case has been made for the order or remedy requested).

The Allegations of Misconduct

Former stewards obtaining signatures for HOPE Local 2220 membership cards under false pretences

29. LIUNA Local 1110 asserts that some of its former stewards obtained signatures on HOPE Local 2220 cards representing that they were necessary for their existing union, LIUNA Local 1110. The particularization of this allegation is that a former steward obtained three signatures at the Woodhaven home on that basis on November 5 and 6, 2011. There is no assertion that this or any other former steward held an official position with HOPE Local 2220 at the time of the solicitations.

30. Accepting, as we do for the purposes of this motion, that such factual assertions are true and provable, the particulars which were provided only affect three employees at a single home and the incident occurred more than a month prior to the vote. At best, it would only affect the card count and the difference of three cards would not have had any significance in determining whether the applicant had sufficient cards to require a certification vote.

31. In addition, LIUNA Local 1110 had over a month between the date of the misrepresentation and the holding of the vote to contact all of its members (for whom they presumably had full and complete coordinates) to communicate any facts or positions it wished to and to correct any misleading or erroneous information being presented to the employees by HOPE Local 2220 prior to the vote being held.

32. It should also be noted that the terms of the Board's Decision of December 5, 2011 and its Notice of Vote and of Hearing (both of which were posted in the workplaces prior to the vote) make it quite clear that the employees are being asked to choose between the applicant and the incumbent union as to who will be their certified bargaining representative. The ballot itself is set forth in the Notice and clearly indicates the choice the employees are being asked to make at the vote.

33. In these circumstances, this alleged misconduct is certainly not the type of pervasive misconduct which would cause the Board to conclude that the true wishes of the employees could not be disclosed in a secret ballot vote and that the vote of some 473 employees should therefore be set aside.

Conduct of Paula Randazzo and Other Supporters of HOPE Local 2220 During the Campaign

34. LIUNA Local 1110 alleges that on or about November 7, 2011, Joan Venator, a Registered Practical Nurse, approached several personal support workers ("PSW's") to solicit their support for HOPE Local 2220 during work at the Woodhaven Home. It is asserted that some of these unidentified workers reported to LIUNA Local 1110 that they felt intimidated because, as the RPN on shift, she would be responsible for supervising their actions. There was no suggestion that these workers signed cards as a result of this solicitation by the RPN.

35. These allegations cannot form the basis for setting aside the vote and dismissing the application for certification. RPN's are included in the bargaining unit and are not supervisors or managers. There is no suggestion that Ms Venator did or said anything other than solicit support from her fellow employees on behalf of HOPE Local 2220. There is also no assertion that the employees who were approached signed cards as a result of the solicitation or that they were precluded from exercising their choice in a secret ballot vote held a month later by reason of this alleged conduct. This allegation as a basis for setting aside the vote is, in our view, without merit.

36. LIUNA Local 1110 also asserts that Ms Randazzo issued a letter on November 8, 2011 which created the impression that HOPE Local 2220 was simply an evolution of their existing union, LIUNA Local 1110, by asserting such things as "There has been a big change in your union ...".

37. The letter circulated by Ms Randazzo (which was filed with the Board by LIUNA Local 1110) is attached to this decision as Schedule "A". In our view, it clearly describes that HOPE Local 2220 is a new union affiliated with the Carpenters' union and that it is in no way connected with the incumbent union. We do not see how anyone reading this letter could be confused by its content or message.

38. In addition, and as previously indicated, the Board's Notice of Vote and of Hearing and the ballot itself leave no room for doubt about the choice the employees were being asked to make. The assertion is, in our view, without merit on its face.

39. The Union also complains that Ms Randazzo and three other former Local 1110 members used the Local's resources and confidential membership information to contact the members on behalf of HOPE Local 2220.

40. Such action may well constitute a contravention of a common law right of LIUNA Local 1110. Indeed, it appears that LIUNA Local 1110 regarded it as such as they brought an application to the Ontario Superior Court of Justice to recover all their assets, property and confidential information and obtained an order of the court to such effect.

41. It is difficult, however, to see how such activity on behalf of these four individuals could be said to constitute a contravention of the Act. Even if it did, however, it would not provide the basis for setting aside the results of the secret ballot vote conducted in response to the application for certification as the alleged misuse of such property and information did not by itself result in any misrepresentation or other improper influence on the employees who were being asked to cast their ballot in a Board regulated secret ballot vote.

42. LIUNA Local 1110 further asserts in its pleadings that the "Carpenters" continued to use the confidential information after the court Order was obtained and, on November 30, 2011 (seven days before the vote), made automatic calls to members purporting to be from Ms Guzzo, acting business manager for LIUNA Local 1110.

43. There is no assertion or particularization, however, of who made such calls or what message was communicated. In these circumstances, such an allegation cannot form a basis for setting aside a vote held a week later.

44. Finally, LIUNA Local 1110 asserts that the employer, Chartwell, allowed Ms Randazzo to campaign in the lobby of the Waterford Home on a specific day (Saturday, November 26, 2011).

45. Notwithstanding that particulars of all allegations were requested by HOPE Local 2220 and Chartwell on several occasions during this proceeding, there is no indication before the Board of what Ms Randazzo did or said on this day or how many employees she encountered.

46. At its highest, this factual allegation asserts that one officer of the rival union was allowed into a public area of one of the four homes during one day which occurred twelve days prior to the holding of the vote. There are no particulars of what she did or said or to how many people or for how long she was there.

47. In our view, this allegation does not constitute the pervasive type of misconduct which would objectively lead the Board to conclude that a reasonable employee would be unable to express his or her true wishes in a secret ballot vote by reason of this event occurring such that we should intervene and set aside the results of the vote.

Restrictions by Chartwell on access to the facilities and the employees by LIUNA Local 1110

48. LIUNA Local 1110 alleges that on or about Monday, November 7, 2011, Chartwell commenced restricting access of Local 1110 representatives to the W Homes by denying their representatives access to the building that they previously had. LIUNA Local 1110 does, however, acknowledge that an access protocol was then negotiated with Chartwell's Vice-President of Labour Relations, Ms Dolan, which allowed the local to appoint representatives to conduct the business of stewards and gave them access to the premises to administer the terms of the collective agreement.

49. According to the pleadings filed by LIUNA Local 1110 in its section 96 application, following the filing of a Section 96 application by HOPE Local 2220 (on November 17, 2011) claiming that it was being denied access to the W Homes, the employer, on November 25, 2011, advised Ms Guzzo, Acting Business Manager of LIUNA Local 1110, as follows:

> Sent: Nov 25, 2011 9:18 AM
>
> Hi Nancy,
>
> A few weeks ago you notified us that in the Wynfield, Waterford, Westmount and Woodhaven stewards had resigned and you did not have any representatives to represent your members in the homes. As a result we let you come in the home for specific times to represent your members. As of Monday we will be denying you access to the homes except if you are having a membership meeting, grievance meeting, labour management meeting or investigation into a specific issue related to grievances.
> Thanks for your cooperation.
>
> Karen Dolan
> Vice President, Labour Relations

50. As LIUNA Local 1110 points out, the applicable provisions of the then existing collective agreement provide as follows:

> 7.02 The Union shall keep the Employer notified in writing of the names of the employee representatives and/or committee members and Officers of the Local Union appointed or selected under this Article as well as the effective date of their respective appointments.
>
> 7.03 The Union may hold meetings on Employer premises providing permission has been first obtained from the Employer. Granting or not granting permission shall not be the subject of a grievance.
>
> 7.04 The employer agrees to give representatives of the Union access to the premises of the Employer for the purpose of attending grievance meetings or otherwise assisting in the administration of this Agreement, provided prior arrangements are made with management.

51. While LIUNA Local 1110 proceeded to file a grievance under the collective agreement with respect to this decision of the employer, we do not in these circumstances see any contravention of the Act by reason of the employer's actions in attempting to restrict access to the Homes for the purposes specified under the terms of the collective agreement between the parties. Such an allegation cannot, in our view, form the basis for setting aside the vote in these circumstances.

Chartwell granting preferred access to HOPE Local 2220.

52. LIUNA Local 110 also alleges that its former stewards posted Carpenters' organizing materials on the bulletin boards and that these stewards had employees sign Carpenters' cards during working hours. There have been no particulars filed to identify who such stewards were or when such conduct allegedly occurred. There is no assertion that Chartwell was aware that this was occurring or that Chartwell was asked to remove the material from the bulletin board and failed to do so. There is also no assertion that LIUNA Local 1110 tried to change the locks on the bulletin boards but was prevented from doing so by Chartwell or anyone else.

53. LIUNA Local 1110 also asserts that its former stewards actively campaigned inside the W Homes and signed employees up to membership with HOPE during working hours. LIUNA Local 1110 relies on the allegations in its section 96 application (dated December 1, 2011) in support of such allegations.

54. There may well have been campaigning going on in the Homes by employee supporters of each of the competing unions and it is possible that such activities of employees during working hours may well have violated an employer policy but that does not constitute a contravention of the Act. In addition, there were no particulars filed to identify which former stewards signed employees to Carpenters cards during working hours or whether any such activity was ever brought to the attention of Chartwell.

55. LIUNA Local 1110 also asserts that on December 1, 2011, a former steward who is an employee at the Woodhaven Home remained outside a meeting room in the Home where LIUNA Local 1110 was meeting with members on collective agreement matters. It is alleged that this employee (and other unnamed employees) intimidated members from entering the meeting room and Chartwell management did nothing to prevent it.

56. Once again, there is nothing pleaded to indicate who these employees were; what they did to intimidate others; or what report of the incident was made to management. The allegation itself involves an assertion of unparticularized conduct by unnamed employees of a single home on a specific day which apparently occurred in the presence of LIUNA Local 1110's representatives. It is not the pervasive type of conduct or misconduct which would cause the Board to consider that the results of a secret ballot vote held a week later could not be relied upon as the true wishes of so many employees.

57. In these circumstances, there is no objective basis for the Board to conclude that it cannot rely upon the results of a secret ballot vote by reason of these assertions.

Improper access to certain of the homes on the day of the vote.

58. Finally, LIUNA Local 1110 asserts that four representatives of the applicant were given access to public spaces, such as the front lobby and areas outside of the rooms in which voting was taking place on the day of the vote at the Woodhaven and Westmount Homes. As indicated above, the representatives who are alleged to have been present were employees who work at the homes in question and there is no allegation that they did or said anything to any of the other employees to influence their vote. They were simply present in the areas near where the vote was occurring. LIUNA Local 1110, however, asserts that the presence of these individuals interfered with the conduct of the vote by giving the applicant increased visibility; intimidating employees; and showing that Chartwell has a clear and visible preference for one bargaining agent over the other.

59. As the Board stated in the case of *Sunrise of Unionville*:

> 19. We deal first with the conduct of the Union's contact person and agent for the vote. The allegation is that this person was present near the gates of the Employer's premises. The vote occurred in the library. There is nothing else mentioned about this person's conduct, save for her presence. We simply cannot conclude that her mere presence likely caused any individuals to vote other than in accordance with their true wishes. These assertions do not amount to a *prima facie* contravention of section 76. We rely on the Board's decision in a case with strikingly similar facts, *Citipark Inc.*, [1996] OLRB Rep. May/June 367:
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> 6. Taking the employer's allegations at their highest, it has done no more than assert that on the day the vote was held and outside of the building where the polling station was located, a representative of the applicant trade union "accosted" or "stopped" employees coming to cast their ballots and spoke with them for an average of ten minutes each. On the plain and ordinary meaning of its own words, the employer asserts no more than that the applicant's representative approached and spoke to potential voters. There is nothing in the employer's pleadings which supports its subsequent bald assertion that the union's representative had intimidated, coerced or otherwise improperly affected the voluntary expression of the wishes of any employee who sought to exercise his/her right to cast a ballot in this vote, or which suggests either that voters were deprived of the ability to freely express their true wishes or that the result of the vote does not reflect the true wishes of those employees.

60. We subscribe to and adopt the above-noted rationale and have concluded that this allegation cannot support a decision to set aside the vote in this case.

Withdrawal by HOPE Local 2220 of its section 96 application against Chartwell

61. LIUNA Local 1110 also asserts that the allegations as against it in the section 96 complaint filed by HOPE Local 2220 on November 17, 2011 were so offensive that they constituted an abuse of the Board's processes and were an attempt to improperly influence the voters' perception of LIUNA Local 1110. The attempt to withdraw the complaint after the vote, according to LIUNA Local 1110, bears witness to this improper proceeding.

62. We do not agree that the enlisting of several allegations against LIUNA Local 1110 in the section 96 complaint by HOPE Local 2220 against Chartwell constitutes an abuse of the Board's processes or otherwise provides any cogent basis for setting aside the vote (held over three weeks later) and dismissing this application for certification.

63. To the extent that LIUNA Local 1110 objected to any of these assertions, it had ample opportunity to communicate with its membership to reject or correct anything it believed to be misleading or offensive. Neither the filing of the application nor its subsequent withdrawal cause the Board to consider that it cannot rely upon the results of the secret ballot vote as a true expression of the wishes of the employees.

Applicability of Section 15 of the Act

64. LIUNA Local 1110 also submits that a number of its allegations involve the conferral of support by Chartwell in favour of HOPE Local 2220 such that the Board is precluded from certifying it under section 15 of the Act which provides as follows:

> 15. The Board shall not certify a trade union if any employer or any employers' organization has participated in its formation or administration or has contributed financial or other support to it or if it discriminates against any person because of any ground of discrimination prohibited by the *Human Rights Code* or the *Canadian Charter Of Rights And Freedoms*.

65. We have reviewed all of the decisions of the Board referred to by LIUNA Local 1110 in its submissions where the Board applied the provisions of section 15 to deny an application for certification by reason of employer support. The mischief addressed by this section was described by the Board in the case of *Universite d'Ottawa*, [2006] OLRB Rep. May/June 444 No. 2075 in the following terms:

> 4. This section aims to preclude the conflict of interest that might arise where a trade union does not owe its allegiance exclusively to those whom it seeks to represent. A classic iteration of this principle is found in the following passage from TRI-CANADA INC., [1981] OLRB Rep. Oct. 1509:
>
>> The bargaining process between employers and employees always implies, in addition to their common interest, some degree of conflict between the immediate economic interests of the bargainers – the payer and the receiver of wages. This conflict of interest will necessarily co-exist with their common interest in the welfare of the enterprise from which they both derive their income; and we do not mean to suggest that harmonious relations do not exist between employers and trade unions. But short-run conflicts of economic interest are inevitable, and if they are to be resolved through the process of collective bargaining, it is highly inappropriate for the agency which represents one party to the bargain, to be in any measure under the influence of the other. Collective bargaining by its very nature requires an arm's length

> relationship between the bargaining parties, and there are a number of statutory provisions designed to ensure that this is the case.

66. In support of its position in this respect, LIUNA Local 1110 relies, *inter alia*, on the allegations in its pleadings that Chartwell favoured HOPE Local 2220 by such things as allowing Ms Randazzo to campaign in one of the Homes on November 26, 2011 (paragraph 44 *supra)*; failing to prevent former stewards from disrupting a meeting between LIUNA Local 1110 and its members in one of the Homes on December 1, 2011 (paragraph 55 *supra*); restricting access to the Homes by representatives of LIUNA Local 1110 so that they could only come on the premises for purposes permitted under the collective agreement (paragraphs 48 – 51 *supra*); and allowing employees who worked in the Homes access to the public areas of these Homes during the day of the vote (paragraph 58 *supra*).

67. We have already set forth our views on the significance and impact of each of these various allegations on the request of LIUNA Local 1110 to set aside the results of the secret ballot vote. We also do not accept that the factual allegations as pleaded constitute "other support" within the meaning of section 15 so as to preclude HOPE Local 2220 from becoming the certified bargaining representative of these employees.

68. In arriving at this decision, we note that there is no assertion that HOPE Local 2220 sought the employer's assistance or even that it was aware that it was actually receiving it. Similarly, the pleadings do not contain any specific factual allegations with respect to the employer's knowledge of the matters complained of or its actions in allegedly favouring the organizing efforts of HOPE Local 2220.

69. There are also no specific factual allegations that the employees were aware that the employer was affording support to HOPE Local 2220. In fact, the issuance of the section 96 complaint by HOPE Local 2220 against Chartwell on November 17, 2011 might tend to indicate to the employees that the employer was actually opposed to HOPE Local 2220's efforts to organize the employees.

70. While there is no restriction on the type of employer conduct which can constitute other employer support under section 15 of the Act, many of the cases decided by the Board on this issue involve some form of communication by the employer which indicates to the employees that it prefers the applicant trade union. In this case, there is no allegation that HOPE Local 2220 was party to any form of agreement, arrangement or understanding with Chartwell to enlist its support in this campaign or that Chartwell took any public or overt steps to communicate to the employees or anyone else that it preferred the applicant over the incumbent union.

71. There are two lines of case authority that have developed at the Board regarding the interpretation of section 15. One line of authority stands for the proposition that section 15 of the Act can only apply in situations where the trade union was aware of the support offered to it by an employer. If the trade union was not aware of that support, section 15 of the Act does not apply and an application for certification will be permitted to proceed.

72. Other decisions of the Board, however, have indicated that there need not be evidence of collusion between the employer and the trade union or even knowledge of the support by the employer on the part of the union in order to invoke the provisions of section 15 if an objective assessment of the circumstances indicates that because of the employer support a favoured union could not reasonably be said to be the freely-designated choice of the employees. In the case of *Superior Boiler Works & Welding Ltd.*, [2010] O.L.R.D. No. 4656 the Board framed the applicability of section 15 as follows:

> 54. In my view, the place to start one's consideration of this question is section 2 of the Act. Section 2 states that one of the purposes of the Act is to facilitate collective bargaining between employers and trade unions that are the *freely-designated* representatives of the employees. Subject to remedial certification authorized by section 11 of the Act, in the normal course a trade union can secure a certificate from the Board only if it can establish that it is the "freely-designated" representative of the employees in the bargaining unit. It is this underlying purpose of the Act that informs the approach taken by the Board to section 15 of the Act that is reflected by *Covertite Eastern Limited*, cited above. In that decision, at paragraph 56, the Board notes that it is employer support "which is of a character or proportion such that it is reasonable to infer that employees have not exercised a free choice in the matter of the selection of a bargaining agent" that triggers the application of section 15. The Board must be satisfied that the choice made by employees is, in fact, a reflection of the free will of the employees in question, and not something else.
>
> 55. It is for this very reason that I do not disagree with the assertion by counsel for the CNFIU that the two lines of cases identified during argument can co-exist, side-by-side. In clear cases of collusion between an employer and a trade union, there can be no doubt that section 15 of the Act ought to apply to preclude that trade union from successfully bringing an application for certification. An employer in those circumstances has clearly offered support to the trade union that has the effect of eliminating any pretence that the employees have freely chosen the trade union to represent them as their bargaining representative with an employer. The critical arms length relationship that underpins the Act does not exist, and a trade union ought not to be given the authority to represent employees of an employer in those circumstances.
>
> 56. Are situations of collusion the only circumstances under which section 15 of the Act can apply? Some of the decisions relied upon by the CNFIU assert this to be the case. In my view, section 15 of the Act ought not to be limited to cases in which it is established that there has been collusion between an employer and a trade union. Section 15 can be applied to situations in which a trade union is unaware of the support given to it by an employer, if an objective assessment of the circumstances allows the Board to conclude that due to the actions of that employer the trade union cannot be reasonably said to be the freely-designated representative of those employees. This is the exact point made by the Board in *Covertite Eastern*, cited above, at paragraph 64.

73. In our view, regardless of which line of cases is applicable, in the particular circumstances of this case the application of HOPE Local 2220 cannot be precluded on the basis of section 15 of the Act. Certainly, there is no allegation of collusion between HOPE Local 2220 and Chartwell or even that HOPE Local 2220 knew of the assistance allegedly being extended to it by Chartwell. Accordingly, if the more rigorous test under the Board decisions is to be applied, then LIUNA Local 1110's request to dismiss the application under section 15 of the Act must fail.

74. If, on the other hand, section 15 can be applied even if the favoured union is unaware of the employer support, then in our view, in the circumstances of this case, based on our assessment of the factual allegations (as set forth in some detail above) we do not agree that the matters complained of could reasonably or objectively be considered to constitute employer support under section 15 of the Act

so as to prevent HOPE Local 2220 from representing the employees of this bargaining unit as their freely-designated certified bargaining representative.

75. The main basis advanced by LIUNA Local 1110 for the application of section 15 in this case is that on a very limited number of occasions during a month-long hard-fought campaign by two large and well-established unions, the employer failed to adequately police the activities of some supporters of the applicant union. We do not believe that in these circumstances this constitutes "other support" within the meaning of section 15 of the Act.

76. We accordingly find that section 15 does not apply as a bar to preclude HOPE Local 2220 from being certified as the bargaining representative of the employees in this case.

Decision

77. On the basis of the foregoing, we are not satisfied that any of the allegations, either individually or collectively, made by LIUNA Local 1110 in its section 96 application; its submissions contained in its intervention in the application for certification; or its subsequent allegations relative to events which occurred on the date of the vote would, even if true, lead us to conclude that the true wishes of the employees in this large and geographically separated bargaining unit were not reflected in the results of the representation vote which expressed the choice of the employees by over a 3 to 1 margin that they wished to have the applicant, HOPE Local 2220, represent them in their relationships with their employer.

78. In arriving at this conclusion, we have taken note of the fact that there is no suggestion that any employee was concerned about their job, personal safety, economic security or indeed any form of adverse consequence if they preferred one union over the other. This is a working environment where the employees are not strangers to the meaning of union membership, union representation or a collective bargaining relationship. In these circumstances, we do not believe their right to choose which union should represent them in a Board supervised secret ballot vote should be set aside by reason of the sporadic incidents of alleged misconduct filed by LIUNA Local 1110 in response to a campaign by another union to displace it as bargaining representative for this large group of employees.

79. Accordingly, it is our decision that the motion by HOPE Local 2220 to dismiss the allegations of LIUNA Local 1110 as they impact upon the application for certification succeeds as LIUNA Local 1110 has not made out a case for the orders or remedies requested even if all of the facts pleaded are assumed to be true.

80. In view of our determination on the preliminary motion filed on behalf of HOPE Local 2220 that the application as pleaded does not make out a case for the orders or remedies requested, the Board finds it unnecessary to deal with the other preliminary objection raised by HOPE Local 2220 to the effect that the Board should defer any consideration of the issue of whether LIUNA Local 1110 was denied access to the premises of Chartwell since that matter has been referred by LIUNA Local 1110 to the arbitration process. In addition, the motion placed before the Board by HOPE Local 2220 involving their position that various complaints of LIUNA Local 1110 should be dismissed because it has failed to provide sufficient particulars to allow HOPE Local 2220 to prepare and present its response to the allegations has also become moot by reason of this decision.

81. The application pursuant to section 96 against Chartwell is also dismissed since, as acknowledged by LIUNA Local 1110 at the hearing, it would serve no useful labour relations purpose to continue with that proceeding in light of the decision of the Board relative to the allegations of LIUNA Local 1110 in connection with the application for certification.

82. Having regard to the agreement of the parties, we find the following to be an appropriate bargaining unit:

> all employees of 1367178 Ontario Inc. c.o.b. as: The Westmount – 200 David Bergey Drive, Kitchener, Ontario; The Wynfield – 451 Woodmount Drive, Oshawa, Ontario; The Woodhaven – 380 Church Street, Markham, Ontario; The Waterford 2240 Baronwood Drive, Oakville, Ontario; Save and except supervisors and persons above the rank of supervisor, Nurse Managers, Educator, Co-ordinators, Registered and Graduate Nurses, Recreation Managers, Volunteer Co-ordinator, Maintenance, and office and clerical staff.

83. On the taking of the representation vote directed by the Board, more than 50% of the ballots cast by employees in the bargaining unit were cast in favour of the applicant, HOPE Local 2220.

84. A certificate will accordingly issue to the applicant for the above bargaining unit.

85. The Board declares that LIUNA Local 1110 no longer represents the employees of Chartwell in the bargaining unit.

86. The Registrar will destroy the ballots cast in the representation vote taken in this matter following the expiration of 30 days from the date of this decision unless a statement requesting that the ballot should not be destroyed is received by the Board from one of the parties before then.

87. The responding party to the certification application (Chartwell) is directed to post copies of this decision immediately. These copies must remain posted for 15 days.

3450-11-R; 3451-11-R; 3481-11-R Labourers' International Union of North America, Local 247, Applicant v. **Expercom Telecommunications Inc.**, Responding Party v. Port Perry Employees Association, Intervenor; Labourers' International Union of North America, Local 527, Applicant v. Expercom Telecommunications Inc., Responding Party v. Port Perry Employees Association, Intervenor; International Union of Operating Engineers, Local 793, Applicant v. Expercom Telecommunications Inc., Responding Party v. Port Perry Employees Association, Intervenor.

Bar – Certification – Collective Agreement – Constitutional Law – Construction Industry – Employer Support – Timeliness – On the agreed statement of facts there was no dispute that the employer was involved, from time to time, in the installation of new poles, conduit, fibre optic cable, copper cable in new residential subdivisions and this work included the digging and backfilling of trenches, the laying of conduit, the pulling of cable, the replacing and installing of junction boxes and pedestals and bases and the stringing of lines on poles – The Board noted that even if the principal business of the employer is not in the construction industry, if the employer only occasionally or intermittently engages in construction industry work it is enough for the employer to be found to be an employer in the construction industry – The Board found it difficult to conceive the work as being anything other than construction and noted that the attempt to argue the work was maintenance failed since the installation of new telecommunication infrastructure to

expand the Bell network can no more be characterized as maintenance than the building of a new highway can be characterized as maintenance to the Province's existing highway system – Fifteen months prior to these applications the employees' Association and the employer renegotiated their collective agreement mid-term and entered into a second one (ratified by the employees) without jointly seeking the Board's consent – The Board reviewed its case law under s. 58(3) noting that the statute explicitly requires that private arrangements to terminate a collective agreement early be monitored and supervised by the Board, which would remove any possibility of other employees or trade unions arguing that the prior arrangements of the parties were inadequate – The Board rejected an argument that the section was somehow discretionary, finding that if a collective agreement shall not be terminated by the parties before it ceases to operate without the consent of the Board, and the Board's consent has not been granted (let alone even been sought), the collective agreement cannot be terminated – Accordingly, the second collective agreement was not a bar to the applications – Finally the Board dealt with the Association's late submissions that the matter was federal (given the work was for Bell) and not within the Board's jurisdiction – For a number of reasons the Board refused to entertain this motion, including that the employer knew the facts underlying the constitutional issue and failed to raise them in a timely fashion and no notice was provided to the Attorneys General pursuant to the Board's Rules or the *Courts of Justice Act* – Alternatively, assuming it was wrong not to entertain the constitutional question, the Board found that the matter was within provincial jurisdiction relying on a number of cases that noted a general construction company whether building an airport or a telephone line has only a "casual" (in the words of the jurisprudence) relationship with its federal customers which cannot alter the constitutional authority over its regular line of business – Accordingly, if required, the Board found the activities of Expercom to be subject to provincial regulation

BEFORE: *Bernard Fishbein*, Chair.

APPEARANCES: *S. B. D. Wahl*, *S. Axelson* and *D. MacDonnel* appearing for Labourers' International Union of North America, Local 247 and Labourers' International Union of North America, Local 527; *Kristen Agrell* appearing for International Union of Operating Engineers, Local 793; *James LeNoury* and *Scott Tippin* appearing for the responding party; *John-Edward C. Hyde* and *Gord Brooks* appearing for the Intervenor.

DECISION OF THE BOARD: June 26, 2012

1. These are three applications for certification under the construction industry provisions of the *Labour Relations Act, 1995*, S.O. 1995, c.1, as amended (the "Act") which the applicant unions elected to deal with under Section 128.1 of the Act. They have been the subject of previous Board decisions including the direction of various representation votes in which the ballot boxes were sealed and all ballots segregated, and decisions directing a Case Management Hearing to at least deal with the first two of the many issues that the parties were raising (and, not surprisingly, mainly the Responding Party and the Intervenor in opposition to these applications).

2. The Case Management Hearing was held on April 11, 2012. At that time, the Board heard from the parties. It was agreed that the Board should first hear submissions about "the construction industry question", namely whether the subject employees were engaged in the construction industry and

whether the responding party, Expercom Telecommunications Inc. ("Expercom") was an employer in the construction industry and thereafter on "the timeliness issue".

(a) The Construction Industry Question

3. At the urging of the Board, all of the parties commendably agreed on the fundamental facts so the submissions on the construction industry question could be made without the calling of *viva voce* evidence. In particular, leaving aside both the parties' characterization or the conclusions they urged should be drawn from them, they did agree on the following facts:

> 1. Expercom is solely in the business of telecommunications installation, repair and maintenance. Although Expercom has done work for other than Bell Canada ("Bell"), there was no agreement at this point in time exactly where, or how much of Expercom's work was for those other than Bell. However, there was no dispute that the overwhelming majority of Expercom's work at this point in time was for Bell.
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> 2. The work performed by Expercom employees was to the Bell network – placing fibre optic drop wire, copper wire and cable and installations owned by Bell.
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> 3. The fibre optic drop wire, copper wire and cable are supplied and owned by Bell.
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> 4. At some installations, fibre optic drop wire and copper are placed in conduit boxes, owned by Bell. There was no dispute that Expercom's employees replaced cable boxes from time to time. The conduit boxes are placed in right of way or easements owned by Bell. Bell technicians (not Expercom employees) connect the wire to the Bell network.
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> 5. Expercom employees install some aerial poles, strands, aerial hardware, and aerial telecommunications cable, all of which are owned and supplied by Bell.
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> 6. Expercom employees also repair and replace damaged poles, strand and aerial telecommunications cable when directed to do so by Bell. Repair work is approximately 25 to 30 per cent of the work of Expercom employees.
>
> 7. Expercom employees place telecommunications cables in Bell's existing underground duct structures. This work involves rodding a duct with a large fish tape and placing a pull rope in the duct. The cable is then pulled into the duct leaving it for Bell technicians to connect to the network. Expercom employees also service damaged or blocked Bell ducts when directed to do so by Bell.
>
> 8. Expercom employees perform work when called upon to extend the existing Bell duct structure, so that telecommunications cable can be terminated in a more strategic location. This can involve placing a duct or ducts using a small excavator or backhoe, and then placing the cable in the duct. The cable is left at a predetermined location for a Bell technician to hook it up.

> 9. Expercom employees are not engaged to perform site preparation, install pipes, construct manholes or general construction site clean up (other than cleaning up after themselves). There is a dispute whether tunnel boring is done by Expercom employees or subcontracted by Expercom to other contractors.
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> 10. There is no dispute that Expercom performs new installation work for Bell, from time to time, in new residential subdivisions that are being built.
>
> 11. There was no dispute that the work Expercom now performs for Bell was previously performed for Bell by Aecon, a utility contractor bound to collective agreements with both the applicants.

4. The parties agreed to argue the construction industry question on the basis of these facts.

5. The applicants Labourers' International Union of North America Local 247 and Local 527 ("the Labourers") submitted that the agreed upon facts clearly showed that Expercom, from time to time, operated a business in the construction industry. There was no dispute that from time to time, Expercom was involved in the installation of the new poles, conduit, fibre optic cable, copper cable in new residential subdivisions that were being built, all of which, in the Labourers view, constituted construction work. There was no *dispute* that the work included the digging and backfilling of trenches, the laying of conduit, the pulling of cable, the replacing and installing of junction boxes and pedestals and bases and the stringing of lines on poles. In the view of the Labourers that fell well within the definition of construction industry in section 1(1) of the Act:

> "construction industry" means the businesses that are engaged in constructing, altering, decorating, repairing or demolishing buildings, structures, roads, sewers, water or gas mains, pipe lines, tunnels, bridges, canals or other works at the site;

6. The Labourers referred me to *Corporation of the City of Toronto*, [1978] OLRB Rep. December 1145 at paras. 14 and 15; *Abitibi-Price Inc.* [1986] OLRB Rep. December 1613 at paras. 36 to 43; *Hank Deenen Landscaping Limited*, [2006] OLRB Rep. July/August 513; *Ontario Hydro*, [1997] OLRB Rep. January/February 82; *Empire Continental Management et al.*, [2008] OLRB Rep. January/February 21.

7. The applicant International Union of Operating Engineers, Local 793 ("IUOE") joined in and adopted the submissions of the Labourers.

8. Expercom contends that its activities do not fall within the definitions of construction industry in the Act and that it is not a construction industry employer. Expercom argues that the focus should be on work being done which must be examined in the context in which the work is done. *A-1 Hydrant Services Ltd.*, [2005] OLRB Rep. May/June 350 at page 355; *Aramark Canada Facilities Services Limited* 2009 CanLII 51486 (ON LRB) (September 23, 2009) paras. 24, 25 and 27. Accordingly, Expercom says it does not perform the work within the parameters of section 1 of the Act. Rather, Expercom contends that it is engaged by Bell only to maintain "its system of communication". It concedes that as a result of the work Expercom does, the Bell system may be expanded to welcome new customers but it is still Bell's existing system. According to this analysis, Expercom asserts that it is therefore only maintaining Bell's system (although providing it to new customers). Maintenance is not within the definition of the construction industry. Expercom points me to the decision in *The Master*

Insulators Association of Ontario Inc., [1980] OLRB Rep. October 1477 and in particular paragraphs 28 to 29.

9. Expercom's submissions were adopted by the intervenor, Port Perry Employees Association (hereinafter either "PPEA" or "the Association").

10. The Board's approach to this question has been relatively consistent since at least *Tops Marina Motor Hotel*, [1964] CLLC para. 16,004 and *Kapuskasing Board of Education*, [1972] CLLC para. 16,057. Even if the principal business of the employer is not in the construction industry, if the employer only occasionally or intermittently engages in construction industry work it is enough for the employer to be found to be an employer in the construction industry.

11. As the Board stated at paragraph 15 of the *Corporation of the City of Toronto* decision that the Labourers and IUOE referred to:

> "The Board has on many occasions considered situations where employers whose principal or common business is not in the construction industry have been affected by an application for certification under the construction industry provisions of the Act but who have clearly entered the field and performed work which would be commonly regarded as construction work. In the *Tops Marina Motor Hotel* case, *supra*, the Board held that it was not necessary for the construction activity to be the only business activity or the primary business activity of an employer in order for such an employer to operate a business in the construction industry. Similarly, in the *Kapuskasing Board of Education* case, *supra*, the Board held that while the principal business of an employer may not be in the construction industry, such an employer may also operate a business in the construction industry, either on a temporary basis or for some period of time, even though the employer does not anticipate it will regularly carry on a business in the construction industry in the future or even carry on one more operation in the construction industry. In these circumstances the Board has held that this was not a reason not to hold such an employer is carrying on a business in the construction industry. The Board also noted that in that case there is no requirement that in order to operate a business, an operator of such business must necessarily carry on such venture with a view to making a profit."

This has been the consistent jurisprudence of the Board to date. See by way of further example *Abitibi-Price Inc., supra*, at paras. 36 to 43.

12. At a minimum, there is no dispute that Expercom from time to time installs communications infrastructure for Bell at new subdivisions being constructed which would involve anything from the installation of poles, stringing wires between them and installing supporting hardware, or excavating and backfilling the trenches, installing duct and pulling wires through that duct. It is difficult to conceive that work as being anything other than construction. As the Labourers pointed out, under the analysis that Expercom was advancing, the contractor that builds a new transmission line for Hydro One would not be doing construction because no new power was being generated and it was just to serve Hydro One's existing system or customers. That is just not tenable and not consistent with the common understanding of the construction industry or the Board's jurisprudence.

13. Expercom and the Association also somehow contend that this work does not literally fall within any of the items or actions specified in the definition of construction industry in the Act.

However, this telephone infrastructure can easily fall within either "structure" or "other work at the site" and it is being installed at new residential subdivisions. Certainly the definition of "sector" in Section 126, the definition section for the construction industry provisions of the Act, clearly provides that any sector is a division of the construction industry and includes the "residential sector". As well, even if I accept the argument of Expercom and the Association that the employer is not "constructing" the Bell network (and I do not), even on Expercom's terms, the employer is "altering" it. In many ways (other than it is for Bell and to its telecommunications network) the work is not so different from the work in question in *Abitibi, supra*, (see para. 37) which also involved an "existing" system.

14. To somehow characterize this work as maintenance, as Expercom and the Association seek to do, is, with all due respect, "metaphysical legerdemain". As stated previously, it is difficult to conceive how building infrastructure where none was before in a new subdivision can be said to be *maintaining* Bell's existing network where no such network previously existed. This is strikingly different from what the Board called maintenance in *The Master Insulators Association* case, *supra*, referred to by Expercom and the Association. In fact, this is relatively explicit in paragraph 28 and 29 of *The Master Insulators Association* decision:

> "…In our view, the work at the premises of Fearman, which involved an addition to an existing facility and involved both relocation of producing units and the expansion of existing capacity, was clearly new construction. Similarly, the work on the emergency shower and change house at Stelco was an addition for the safety and comfort Stelco's employees and represented new construction. This work is clearly within the industry, commercial and institutional sector of the construction industry. The rest of the work referred to in the complaint was, for the most part, clearly work which sustained and maintained an operating facility and enabled that facility to either operate efficiently or to attain its designed or production capacity and it [*sic*] to be regarded as maintenance work. Maintenance work is to be distinguished from construction work which involves the addition to an existing facility or which will increase the designed or production capacity of an the existing facility."

15. The installation of new telecommunication infrastructure to expand the Bell network to where it was not previously can no more be characterized as maintenance than the building of a new highway (or even an extension to an existing one) can be characterized as maintenance to the Province's existing highway system.

16. Accordingly, I find that Expercom employees are engaged in the construction industry and Expercom is an employer in the construction industry.

(b) The Timeliness Question

17. By and large the facts with respect to this issue are also not in dispute and have been set out in prior decisions of the Board. The Association was issued a certificate by the Board on January 14, 2009 (OLRB File No. 2868-08-R) pursuant to the general provisions (and not the construction industry provisions) of the Act for a bargaining unit of all employees of Expercom Telecommunication Inc. in the Province of Ontario, save and except non-working foremen, persons above the rank of that non-working foreman, office and clerical staff. That bargaining unit was upon the agreement of the parties, namely, Expercom and the Association.

18. Following the issuing of this certificate Expercom and the Association negotiated a collective agreement that was effective from February 8, 2008 to February 5, 2012 ("the first collective agreement"). However, for business reasons with respect to Expercom's relationship with Bell Canada (and the potential for much more business with Bell Canada), Expercom and the Association reopened that collective agreement in October 2010 and negotiated a new collective agreement which was effective from October 10, 2010 to February 5, 2015 ("the second collective agreement"). Expercom and the Association assert that the second collective agreement was presented to the members of the Association and ratified by them on October 2010.

19. More specifically, the Association (or the PPEA) asserts:

> "Historically, and subsequent to the entering into the first collective agreement, the PPEA has held its membership meetings in the "back shop", of the Expercom facility in Port Perry, Ontario. The "back shop" is closed to management personnel during such meetings. Notices of meetings are placed on "whiteboards" near employee entrances, where all employees of the facilities have an opportunity to read them.
>
> During the early part of the week of September 27, 2010 - October 1, 2010, notice was placed upon the facility whiteboards in both Port Perry and Aurora, Ontario. That notice stated in part, a meeting would be held at the Port Perry shop on October 2, 2010 for the purposes of ratifying a new collective agreement; that a vote would be taken and attendance was mandatory. Such notice was placed in a manner most likely to have come to the attention of every member of the PPEA, entitled to vote.
>
> In 2010, the complement of employees (PPEA members) was significantly smaller than it is today. On Saturday, October 2, 2010 approximately 40 members of the PPEA met at the Port Perry shop, for the ratification meeting. The new collective agreement proposals were discussed in detail and at length, including but not limited to the extended term, termination of the first agreement, and the increased salary and benefits over the terms of the second collective agreement. The members also discussed one of the purposes of the new collective agreement; the potential to secure additional Bell Canada work and the resultant addition of job security over the long-term. After such discussion, the members of the PPEA in attendance, unanimously voted for the ratification of the second collective agreement…."

20. Neither the Labourers nor the IUOE are prepared to agree to any of these assertions made by the Association with respect to what actually transpired with respect to the ratification of the second collective agreement. Regardless, what is clear is that no application with respect to the early termination of the first collective agreement was made pursuant to section 58(3) of the Act which provides:

> "A collective agreement shall not be terminated by the parties before it ceases to operate in accordance with its provisions or this Act without the consent of the Board on the joint application of the parties."

21. It is this second collective agreement that Expercom and the Association assert is a bar to these applications for certifications and which should therefore be dismissed as untimely. At the Case Management Hearing, the parties agreed that they could still make submissions on whether the second collective agreement was legally enforceable (and therefore a bar to these applications) on the "best case scenario" asserted by the Association and Expercom. In other words, neither the Labourers nor the IUOE

were agreeing to the facts alleged by Expercom and the Association about how and whether the second collective agreement was ratified, but assuming them to be so (or at least capable of being proven), would that be legally sufficient to make the second collective agreement valid? On this basis, the Board heard the submissions of the parties with respect to the validity of the second collective agreement. But for the second collective agreement, these three applications which were made on January 25, 2012 would be timely, having been made during the last three months of the first collective agreement.

22. The Labourers argued section 58 was clear. Parties to a collective agreement are free to agree to amend any provision of their collective agreement except for the term. This is a mandatory provision of the Act consistent with the express purposes of the Act, and in particular:

> "To facilitate collective bargaining between employers and trade unions that are the freely-designated representatives of the employees."

23. In order to ensure that trade unions are the freely designated representatives of the employees while at the same time maintaining some labour relations stability, the Act regulates the times when the applications for certification, or termination applications can be brought in order to safeguard the rights of third parties – whether it be the employees covered by collective agreements or other trade unions. These times are set by and largely dependent on the duration of any applicable collective agreement. The statute deliberately intends the Board to safeguard the opportunity of other employees to change or eliminate the bargaining rights of trade unions by requiring its permission before any collective agreement can be terminated before the expiry of its term. In the Labourers' submission, this has always been the consistent jurisprudence of the Board and referred us to the following cases: *Ledcor Industries Limited.*, [1993] OLRB Rep. August 758; *Serca Food Services Inc.*, [1999] OLRB Rep. September/October 894; *Laidlaw Waste Systems Ltd.*, [1987] OLRB Rep. October 1267; *Ridgewood Industries*, [1990] OLRB Rep. March 331; *Mining Technologies International Inc.*, [1997] OLRB Rep. May/June 482 at paras. 36 and 37; *Kitchener Frame Ltd.* 2011 CanLII 56137 (ON LRB) (September 9, 2011); *Universal Showcase Ltd.* 2004 CanLII 3057 (ON LRB) (July 2, 2004); and *Blasdell v. United Food and Commercial Workers Union* 2003 CanLII 47149 (ON LRB) (December 8, 2003).

24. The IUOE adopted the submissions of the Labourers. As the IUOE put it, section 58(3) approval was essential and the required precondition to the early termination of a collective agreement. Its absence was fatal to the legality of the second collective agreement.

25. Not surprisingly, the Association took a very different view.

26. The Association argues that the actual termination of the first agreement occurred at least 15 months prior to these applications for certification being made. There appears to be no dispute that the employees who are the subject of these certification applications were not employees at that time and certainly not covered by the first collective agreement in any event. Therefore, the Association argues that these employees would not be entitled to any notice of any application that would have been made under section 58 in any event. Moreover, the Association argues that even if the section 58 application had been made at the material time, there would be no change in the circumstances that now exist. Notice would have been given but there would have been no one who would have objected. There certainly are no allegations that the applicants were organizing in that time. The Association points out that there are no particular allegations of *mala fides* against it about the failure to make a section 58 application (nor could there be since the Association was unaware of any organizing attempts by the applicants – nor could it have been since none were taking place at the time) and the process adopted by the Association (which is not agreed to have occurred by either of the applicants) substantially met any requirements that would have been imposed in an application under section 58(3). The result, the Association argues, would not have been any different (or as it puts it, the labour relations landscape would not have been altered in any way) had the section 58 application actually been made and granted as it undoubtedly

would have been. Lastly, the Association argues, based on the decision of the Divisional Court in *Maystar General Contractors Inc.*, 280 D.L.R. (4th) 692, the Board can and should relieve against the Association and Expercom's failure to obtain a consent under section 58(3) – it is within the Board's discretion to do so.

27. Expercom joins in and adopts the submissions of the Association. Expercom submits the purpose of section 58(3), i.e. the mischief at which it is directed, is not present in these circumstances. No one was trying to circumvent either of the applicants' organizing efforts and Expercom's employees and the members of the Association at that time had (or the opportunity to have) all the relevant information, including that the first collective agreement would be terminated, and the second collective agreement would be replacing it. Again, Expercom also argues that the requirements of section 58(3) can be waived based upon the decision in *Maystar, supra.*

28. The arguments of the Association and Expercom misconceive the purpose of section 58(3) and the Board jurisprudence. These are accurately set out in the arguments of the Labourers referred to in paragraphs 22 and 23, *supra.* The Board jurisprudence is long and well established. It is aptly summarized in *Ridgewood Industries, supra,* commencing at paragraph 6:

> 6. The Board's limited jurisprudence in this area was well canvassed by the parties at the hearing before us. The case most often referred to, as the "seminal" case under the subsection, is *Firestone Tire & Rubber Company Limited*, 54 CLLC 1484. That case in fact is of limited assistance, since there was no objection made to the application other than, in a conditional way, by the employer party to the agreement, but is nonetheless referred to in the case closer to our own of *National Cash Register*, [1967] OLRB Rep. April 90. In the latter case the Board set out the facts and its concerns as follows:
>
>> 1. This is a joint application for early termination of a collective agreement. The agreement currently in effect between the parties became effective on July 6th, 1964 and would by its terms, expire on July 6th, 1967. In the normal course, the "open season" within which an application for a declaration terminating bargaining rights or an application for certification by another trade union might be brought would be the period from May 6th to July 6th, 1967. If the Board were to give its unqualified consent to the application now before it, such an application for certification or termination would be effectively foreclosed.
>>
>> 2. Notice of the application was posted pursuant to the Registrar's direction, and the intervener has objected to the application. It is agreed that the intervener had begun an organizational campaign among employees of the applicant company and that it represented employees of the company. **There is no evidence as to the number of employees which the intervener might claim as members**.
>>
>> 3. Counsel for the intervener urged the Board to grant consent to the early termination of the collective agreement only on terms similar to those which the Board imposed in the *Firestone Tire & Rubber Company Limited* Case, 54 CLLC 1484. In that case, the Board stated in part:
>>
>>> "... where a collective agreement is made for a term of more than one year and it has been in effect for at least the minimum period stipulated in subsection 1 of section 37 of the Act, there would

> seem to be no reason for the Board to refuse consent to its early termination unless it is made to appear that any person would be prejudiced thereby. For example, consent might be refused if it could be shown that the purpose or effect of early termination of the agreement would be to deprive another union of a fair opportunity to complete its organizing campaign among the employees bound by the agreement with a view to applying for certification in order to displace the established bargaining agency. Nothing of this sort came to the Board's attention in this case."

In that case, there was no objection to the application and no suggestion that another union might be deprived of the opportunity to organize. Nevertheless, the Board in granting consent to the early termination did so by providing for the giving of two months' notice of such termination. The effect of this was to substitute an earlier "open season" for that which would otherwise have preceded the termination of the agreement. In the instant case, of course, there is objection to the application and there is evidence of the sort contemplated in the *Firestone* decision.

4. It is true, as counsel for the company pointed out, that the intervener cannot rely on any "right" to organize established under The Labour Relations Act since the Act makes no reference to organizational campaigns. There is undoubtedly, however, a right of employees to join the trade union of their choice (section 3) and for this right to have any practical value there must be the concomitant possibility of the chosen unions applying for certification at a time when it would be possible to do so.

5. Counsel for the applicant trade union urged that the intervener should be required to show a substantial degree of successful organization among employees of the company before the Board would give serious consideration to its objection. On this count, it is noteworthy that in the *Firestone* case the Board preserved an open season even though there was no evidence whatever that any other union sought to represent employees. It is our view that the Board ought not to attempt to assess the chances of success of any union's organizational campaign nor should it attempt to establish what might constitute a "substantial degree of successful organization" in any particular case.

6. *In our view, it is of vital importance that an open season be preserved at least where any person or organization having an interest takes objection to its foreclosure*. It has not been the Board's practice in recent years to preserve the open season where no objection has been taken to a joint application of this sort. Thus, in a joint application by the instant employer and the Canadian Office Employees Union No. 159 N.C.C.L., Board File No. 12757-66-M, the Board on April 12th, 1967, granted consent to the termination effective January 1st, 1967 of a collective agreement in effect between those parties. *Where there is objection taken, however, it is our view that foreclosure of the open season would constitute a denial of the rights of employees under the Labour Relations Act.*

[emphasis added in uppercase text]

There, as here, there had been a "ratification" vote taken by the incumbent union of the terms of the new agreement (as well as of the application itself). About that the Board had this to say:

> 7. In a letter to the Board accompanying the application, the applicant trade union stated that following notice to employees a ratification meeting was held with respect to a new collective agreement which had been negotiated by the parties. Some 180 employees attended the meeting (the applicant company has approximately 480 employees) and a majority voted in favour of ratification. The meeting then voted unanimously in support of the present application. It was not argued at the hearing of this matter that these events raised any estoppel against objections to this application. **We would observe, however, that it would require clear evidence of waiver of each employee's right to participate in proceedings leading either to certification of another trade union or termination of the incumbent union's bargaining rights for such an objection, if taken, to succeed. Even assuming that no question as to the propriety or sufficiency of notice to employees arose, it would not be the case that "ratification" proceedings necessarily implied the waiver of their rights under the Act by those employees who received such notice**.

The Board then stated its conclusion as follows:

> 8. Having regard to all of the foregoing, the Board consents to the early termination of the collective agreement now in effect between the parties as of June 12th, 1967, **being two months from the date of this endorsement**. The Board directs that copies of this endorsement be posted in conspicuous places on the premises of the employer in accordance with instructions to be issued by the Registrar.

7. *Canada Building Materials*, [1968] OLRB Rep. Mar. 1210, was a similar case in which parties to a collective agreement that was scheduled to expire in August of 1968 asked the Board for its consent to terminate the agreement in March -- thus, once again, eliminating the pending "open period" altogether. Objection to the application was raised and is set out in the following terms:

> 2. Notice of the application was posted pursuant to the direction of the Registrar of the Board and the intervener has objected to the application. The intervener filed with the Board three applications for membership cards on behalf of three employees of the company applicant. Counsel for the intervener submitted that if consent was to be granted at all in this case the Board should not shut out the opportunity of the intervener to organize. Further he stated that the intervener had relied on the provisions of the Act with respect to the "open season" for the current contract between the applicants hereto and alleged that this should remain available to it where it has objected and submitted evidence of membership for employees in the bargaining unit involved.

The Board simply adopted the comments contained in the *National Cash Register* case, and again granted the early termination **only on the basis that it would be effective two months from the date of the Board's decision.** To the same effect was *Standard Products (Canada) Limited*, [1969] OLRB

> Rep. Apr. 123, and the Board granted the application on precisely the same terms.
>
> 8. In the present case, the Board recessed to consider the foregoing case law and the submissions of the parties, and then delivered oral reasons for dismissing the application, as follows:
>
>> As Ms. Turtle has noted, parties to a collective agreement are given wide latitude to make amendments or adjustments to their collective agreement should they so choose. Section 52(5) of the Labour Relations Act makes that clear:
>>
>>> Nothing in this section prevents the revision by mutual consent of the parties at any time of any provision of a collective agreement other than a provision relating to its term of operation.
>>
>> In addition to that one proviso, section 52(3) of the Act also stipulates:
>>
>>> A collective agreement shall not be terminated by the parties before it ceases to operate in accordance with its provisions or this Act without the consent of the Board on the joint application of the parties.
>>
>> That sole exception to the ability of the parties to order their own affairs reflects a clear policy on the part of the Legislature to preserve the two-month "open period" established by the statute for the bringing of representation applications. **The requirement for Board consent is set out in the Act and is well known, as is the fact that what the Board effectively does is to act as an intermediary to ensure that notice of the parties' intention to alter the term of their existing collective agreement is posted in the workplace.** That posting often produces no objection, and the Board grants its consent as a matter of course. **Where it does produce an objection, however, it is difficult to conceive of a case where the Board *would* grant the early termination in a way that would abridge the rights initially guaranteed by the Act. Certainly the Board is unaware of any case to date that has done that; at best, the Board has sought to accommodate the interests of those seeking to implement a new collective agreement by moving the open period forward – but that has always been done on advance notice to any interested parties, by way of the Board's decision in the application, and never for a period less than the two months that the legislators originally held to be appropriate.**
>
> [emphasis added]

It is noteworthy that in both *National Cash Register Co. of Canada Ltd.* case referred to in *Ridgewood, supra*, as well as in *Ridgewood* itself, the fact that there may have been a ratification vote among the employees did not stop the Board from refusing to grant early termination under the equivalent of section 58(3) – and that is where an application was actually made, not like here where none was made. To the same effect is *Ledcor Industries Limited, supra*, referred to me by the Labourers (although in that case the Board was not persuaded that the notice of the ratification meeting was even adequate).

29. Equally, the argument that there may not have been organizing by these applicants or that the employees objecting were not employees at the time the early termination application was made has never

been successful before the Board. (See for example, paragraph 5 of the *National Cash Register Co. of Canada Ltd., supra* and the Board's comments, at paragraph 20 of *Ledcor Industries Limited., supra,* where the Board concluded that it was not necessary for the union challenging the early termination application to demonstrate membership evidence actually at the time of the early termination:

> "20. The Board's conclusion in this regard is not dependent upon Local 183 demonstrating membership support by at least one employee of Ledcor at the time of the early termination application. **Rather, the relevant time is the point at which the certification application is filed,** provided that the application is filed within what would have otherwise been the open period of the collective agreement whose expiry date was amended by the Board. **The Board also considers it appropriate to restrict the granting of standing to a trade union which actually files a certification application in the period just described and which application is not dismissible [sic] on its face. These criteria, in the Board's opinion, adequately balance the legitimate interests of the incumbent trade union and the employer in avoiding unnecessary disruption to their affairs and of the Board in the finality of its decisions. The Board is concerned with protecting the rights of the employees in the bargaining unit during the open period to select (or change) their bargaining agent, as intended by the Legislature. Those employee rights can only be adequately protected by permitting a trade union which has solicited the support of those employees and filed a certification application seeking to displace the incumbent trade union to request reconsideration of the Board's decision to grant early termination. For it is the Board's consent to the early termination of the collective agreement then in force which enabled the company and the incumbent trade union to enter a new collective agreement which would otherwise constitute a bar to the certification application.**"
>
> [emphasis added]

Again, these are comments made when an application for early termination had actually been made and granted – not like here when none was ever made. To the same effect see the Board's comments in *Laidlaw Waste Systems Ltd., supra*, at paragraph 24:

> "24. In our view it makes no difference that the residential employees were not yet hired at the time the intervener and the respondent purported to terminate the 1985 collective agreement with respect to them. If the intervener and the respondent had not entered into the 1986 agreement, the employees hired on June 2, 1986 would have fallen under the 1985 collective agreement and they would have had an opportunity to challenge the status of their bargaining agent in 1987 when that collective agreement expired. In any event, the opportunity to challenge bargaining rights is synchronized with the cycle of those rights rather than geared directly to the presence or absence of employees. In this case, it is evident that the very mischief to which section 52(3) is directed is present. The respondent wished to stabilize its labour relations by locking the intervener into a collective agreement running for the period of the Mississauga contract. By this means, it is apparent that it hoped to avoid the potential for labour disputes that might arise from either the expiry of the collective agreement or the open period. The intervener agreed to the 1986 collective agreement at least in part because the presence of other

> unions in the wings made a long collective agreement and the avoidance of the open period desirable. As a result, the intentions of the parties and the effect on the residential employees highlight one of the very problems section 52(3) is designed to address, the elimination of the open period. We find that the intervener and the respondent contravened section 52(3) by terminating the 1985 collective agreement with respect to residential employees without the consent of the Board."

30. The unpersuasive justification for the early termination in *Laidlaw Waste Systems Ltd., supra,* is very similar to the justification offered here by both Expercom and the Association – or the lack of *mala fides* as Expercom puts it. In fact, contrary to the assertions of the Association and Expercom that the mischief of section 58(3) is not present in this case, this is exactly what section 58(3) is for. Rather than have an "open" period eliminated and/or delayed by the private arrangements of the parties (assuming that the asserted version of facts by the Association and Exerpcom of the ratification are true), the statute explicitly calls for such private arrangements to early terminate a collective agreement to be monitored and supervised by the Board. The Board's monitoring and supervision of the early termination of a collective agreement (including the posting of the application) (or in the words of *Ridgewood*, acting as an "intermediary") removes any possibility of other employees or trade unions arguing that the prior arrangements of the parties were inadequate, as is the case here. Contrary to what is asserted by the Association, were the section 58(3) application to have been made and granted, the labour relations landscape would have changed – this application would have been *prima facie* untimely as opposed to another trigger of this litigation.

31. The Board has consistently viewed the requirements of the section 58(3) to be mandatory. See for example, paragraph 25 and 26 of *Laidlaw Waste Systems Ltd., supra,*:

> "We now turn to the effect of such a finding. 52(3) [now 58(3)] is framed in mandatory terms, that is, "a collective agreement *shall* not be terminated before it ceases to operate ... without the consent of the Board" (emphasis added). In our view, the strength of the syntax employed suggests that without the consent of the Board, a collective agreement cannot be terminated as described. Since there is no question that the Board did not consent in this case, (and there was no ex post facto request in this regard) we conclude that the 1985 collective agreement continues to operate with respect to all employees in accordance with its recognition clause. This result is consistent with both a literal interpretation of section 52(3) [now 58(3)] and its purpose. Thus the 1986 collective agreement entered into by the intervener and the respondent was the second collective agreement between them which purported to cover residential employees. This is not a tenable state of affairs under the *Labour Relations Act.* Section 49 provides as follows:
>
> > There shall be only one collective agreement at a time between a trade union or council of trade unions and an employer or employers' organization with respect to the employees in the bargaining unit defined in the collective agreement.
>
> 26. Reading section 52 and section 49 together in the context of this case leads us to the conclusion that at the very least, the 1986 agreement could not function as a bar to an application for certification during the term of the 1985 agreement. To hold otherwise would be render both section 52(3) [now 58(3)] and section 49 meaningless in circumstances that clearly fall within the ambit of their respective rationales. As a result of our conclusion in this

> regard, we do not find it necessary to address the applicant's arguments with respect to section 48."

32. Has any of this changed by virtue of the Divisional Court decision in *Maystar, supra*, which the Association and Expercom referred me to? I think not.

33. First, the Divisional Court decision in *Maystar, supra*, was not the last word on the dispute that formed the basis of the judicial review application in *Maystar, supra*, (which had nothing to do with section 58 of the Act). Rather, the Divisional Court decision was appealed to the Ontario Court of Appeal (see (2008) 90 O.R. 3d 451), where the appeal was dismissed on the basis of "mootness" – but the Court of Appeal said the following at paragraphs 42 and 44:

> "42. I conclude, however, with the following caution. Nothing in these reasons should be taken as affirming the Divisional Court's view that the appropriate standard of review of the Board Decision was correctness and that no deference was owed to the Board in its interpretation of the relevant certification provisions in the *LRA*. The decisions of the Supreme Court of Canada, over the course of many decades, show an unbroken commitment to affording labour relations boards the highest levels of juridical deference on matters within their exclusive jurisdiction. See, for example, *Canadian Union of Public Employees Local 963 v. New Brunswick Liquor Corp.*, 1979 CanLII 23 (SCC), [1979] 2 S.C.R. 227, *Canada (Attorney General) v. Public Service Alliance of Canada*, 1993 CanLII 125 (SCC), [1993] 1 S.C.R. 941 and *Royal Oak Mines Inc. v. Canada (Labour Relations Board.)*, [1993] 1 S.C.R. 369. Issues which arise in implementing the *LRA* provisions governing the certification process in the construction industry are such matters."
>
> ***
>
> "44. Appreciating the need for deference on matters within the Board's exclusive jurisdiction further militates against deciding the present appeal on the merits. A decision on the Procedural Issue would require the court to analyze what appear to be two competing lines of Board authority and to perhaps accept one and reject the other. If nothing else, it would be foolhardy for this court to pre-emptively interpret complicated statutory provisions involving practices and procedures of which the court knows very little, before the Board has an opportunity to consider and, perhaps, reconcile those authorities. To embark on a review of the merits would require this court to do precisely what the jurisprudence indicates is improper – rather than defer to the Board, it would have this court dictate the process the Board is to follow when making decisions on certification, a matter within its exclusive jurisdiction."

34. Accordingly, it is by no means clear that the Divisional Court decision in *Maystar* dictates how the Board should interpret "shall" in section 128 of the Act, let alone the Board's interpretation of section 58 (which was not the section before the court in *Maystar)*.

35. Secondly, even assuming *Maystar, supra*, to be a governing authority here (which it is not), its comments are about the use of and the interpretation of the word "shall" in the context of section 128.1(4). Whereas the Court could say in *Maystar, supra*:

> "… Subsection 128.1(4) simply directs the Board to determine the union's level of support as of the certification date, and instructs the Board as to the information upon which it is to make that determination. *Subsection 128.1(4) does not direct the Board to not consider late filed information.*"

That is not true of section 58(3). It expressly states that a collective agreement can not be terminated early without the consent of the Board. Whereas the court could observe with respect to section 128 in *Maystar, supra*:

> "Given that the Legislature's clear intent is to "closely manage the establishment of bargaining rights by certification", if the Legislature intended the Board to *always* refuse to consider the late-filed information, it would have expressly said so."

that is equally not true with respect to section 58.

36. In contrast, the legislative direction in section 58(3) cannot be any clearer. It is not just the use of the word "shall", but as observed in *Laidlaw Waste Systems Ltd., supra*, the syntax of the provision, reading the provisions together with the other provisions of the statute and the overarching purposes and rationale of the statute. If a collective agreement shall not be terminated by the parties before it ceases to operate without the consent of the Board, and the Board's consent has not been granted (let alone even been sought), the collective agreement cannot be terminated. Accordingly, the second collective agreement which can only have effect if the first collective agreement is terminated, cannot be a bar to this application. Even assuming timeliness to be an issue in these applications (and the applicants argue that it is not because there are no construction industry bargaining rights held by the Association) these applications are timely and are not dismissed on that basis.

(c) Constitutional Issue

37. During the course of the Association's arguments, for the first time, the Association raised and questioned whether this application was within the constitutional jurisdiction of the Board (notwithstanding that the initial source of the Association's own bargaining rights was a certificate issued by this Board). The Association raised the question that since Bell is a federal undertaking governed by federal labour relations, and since the overwhelming majority of Expercom's work is for Bell, is its labour relations not subject to federal (not provincial) regulation?

38. At the hearing, which had been scheduled to deal with (and was in the midst of hearing submissions) on other issues, rather than have the proceedings disrupted by this question, I directed the Association to subsequently file written submissions on both the timeliness and the merits of this constitutional argument. The other parties were then given an opportunity to respond in writing to the Association's submissions and the Association was given a further opportunity to respond to those submissions. Some issues arose about the timeliness of additional submissions I requested from the parties after the release, after the Board hearing, of the Supreme Court of Canada decision in *Tessier Ltée v. Quebec (Commission de la santé et de la sécurité du travail)* [2012] S.C.J. No. 23. However, I have now received and reviewed all of the submissions of the parties on this constitutional question.

(i) Timeliness

39. I am quite concerned about the manner in which this issue was raised. Since the filing of this application, the parties and, in particular, the Association has had numerous opportunities to make detailed submissions to the Board on many issues. In fact, the Association has even sought

reconsideration on some of the Board's earlier decisions. Bell has always been a significant, if not the majority, source of Expercom's business. The Association appears to represent only the employees of Expercom. It is simply disingenuous for the Association to suggest that this argument could only have occurred to it in the midst of a Case Management Hearing many months after the certification application was filed.

40. The Association points to its lengthy submissions of February 27, 2012 where it also stated:

> "The Port Perry Association respectfully reserves the right to make such further arguments, including but not limited to issues of the constitutionality and/or jurisdiction, as it may be entitled at law, and where the Board shall permit".

as showing that it has raised from the outset (and given the other parties notice of) this constitutional question without any objection or comment from them. The Association also points to other occasions when it made submissions and purported to "reserve the right to make such further representations as are necessary" (For example, its correspondence of January 31, 2012 and March 26, 2012).

41. First, such "boiler plate" assertions by counsel are neither particularly helpful to the Board nor the parties nor particularly effective. The purport of the Board's rules (and any notion of procedural fairness) require the parties to rather specifically raise issues and advise the parties of their positions with respect to those issues. Glib "Reservations of the right to make further arguments or submissions" (whether or not a common practice among counsel) will not be particularly effective in persuading the Board to entertain issues that catch it and the other parties by surprise when there was ample opportunity to raise them in an adequate fashion beforehand.

42. Second, even if I thought such a reservation to make future arguments was adequate, unfortunately the quote from the February 27, 2012 letter is taken out of context. Leaving aside that it is one general unparticularized sentence in three pages of submissions, a review of that letter discloses that the "constitutionality" remark is made in the context of another Charter argument the Association was raising that somehow these certification applications would violate Charter rights of Association members who had previously chosen the Association as its bargaining agent (ironically, under provisions of this Act which the Association now asserts is not applicable) – it was not made in the context of a constitutional argument about the appropriate division between federal and provincial powers. That was not raised until the midst of the Case Management Hearing.

43. Third, the assertion that the Association was not aware or did not possess "all of the details of the employer's business nor should it be expected to do so until those details became evident that the Case Management Hearing" is simply not credible in these circumstances. As noted before, it appears that the Association represents no other employees than the employees of Expercom. Moreover, the "constitutional" facts that the Association relies upon are both self-evident and blatant. Even if I were somehow convinced that this could somehow be unknown to the Association, those "constitutional" facts were essentially pleaded by Expercom (at Board direction) in a letter dated March 26, 2012 more than two weeks before the Case Management Hearing, and the Association (later supported by Expercom) did not raise this constitutional argument until the middle of the Case Management Hearing.

44. Fourth, under both the Board's Rules of Procedure (see Rule 4) and section 109 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43 ("CJA"), which applies to the Board pursuant to section 109(6) of the CJA, parties challenging the constitutional validity or applicability of any law, regulation or rule must give prompt notice (15 days) to the Board and to the Attorneys General for Ontario and Canada. In fact, section 109(2) of the CJA explicitly provides:

> If a party fails to give notice in accordance with this section, the Act, regulations, by-law or rule of common law shall not be adjudged to be invalid or inapplicable, or the remedy shall not be granted, as the case may be.

45. The Board has refused to entertain constitutional challenges where the Board's Rules of Procedure and the CJA have not been complied with. See for example, *Romzap Ltd.*, [1995] OLRB Rep. December 1475 at paras. 3-6; *Shaw Industries Ltd.*, [1993] OLRB Rep. August 798 at paras. 7-8; *Huron-Superior Catholic District School Board,* [1999] OLRB Rep. July/August 616 at para. 20; and *Toronto (City)* [2010] OLRD No. 220 at para. 16. To date, I am unaware that either the Association or Expercom have yet filed such notices with either Attorney General.

46. Fifth, the Board has previously explained, at some length, that it will not reconsider one of its decisions (including a certification) simply because a party raises, for the first time, a constitutional question going to the Board's jurisdiction. See *Rogers Broadcasting Ltd.,* [2000] OLRB Rep. March/April 384. In fact, after extensively reviewing the Board's jurisprudence, the Board stated at paragraphs 33 and 34:

> 33. The merits of the Board's approach in *McCarthy Milling Limited, supra,* wherein the Board considered the employer's failure to meet the general criteria in refusing to reconsider its constitutional jurisdiction, is bolstered by the fact that the Supreme Court of Canada took a similar approach in *Northern Telecom Ltd. v. Communications Workers of Canada et al.* (1979) D.L.R. (3d) 1 (SCC). In this case, the Supreme Court of Canada declined to refer a constitutional question back to the CLRB for a rehearing where a challenge to the constitutional jurisdiction of the CLRB was raised after certification. The Court refused to do so even though it was not in a position to determine the constitutional issue based on the evidence before it.
>
> **34. In deciding not to refer the matter back to the CLRB for a further hearing on the issue, the Court had regard to the employer's questionable tactics in failing to raise the constitutional issue earlier and the prejudice to employees resulting from the delay. The fact that the challenge to the Board's jurisdiction to issue the certificate in question remained unresolved was found not to be a sufficient reason to order a new hearing in all of the circumstances.** The Supreme Court of Canada therefore dismissed the employer's appeal on the basis that it had failed to show reversible error on the part of the CLRB.
>
> [emphasis added]

47. Although it is fair to say that this is not a reconsideration request and no final decision has yet been issued, these are applications for certification made in January of 2012, many months ago. Because of the many issues the parties are raising (and keep raising) the processing of these applications has only proceeded to the point of a single Case Management Hearing. There are still many issues to be addressed that may require multiple days of hearings (and *viva voce* evidence). Three further days in August have already been scheduled. Certification proceedings are intended to be expeditious and timely. Allowing parties to raise new questions that are fundamentally apparent from the outset in the midst of lengthy contested proceedings (particularly after they have already been afforded ample time to make many sets of submissions), does not further the statutory scheme or purposes of the Act. All of the cases referred to in paragraph 45 (*Romzap Ltd., Shaw Industries Ltd., Huron-Superior Catholic District School Board* and

Toronto (City), were all lengthy cases that had not yet been concluded – still the Board refused to allow constitutional questions to be raised in an untimely manner. Accordingly, the Board as master of its own procedure will not entertain these constitutional issues at this point in the proceedings in view of the manner in which they have been raised.

48. It should be made clear that the Board is refusing to entertain these submissions and not finding that either Expercom or the Association have attorned to the jurisdiction of the Board, as argued by both the Labourers and IUOE – notwithstanding that both Expercom and the Association rely on bargaining rights initially created by a certificate of this Board and that both Expercom and the Association have participated in (and at one point even demanded) the representation votes that have been held (with the ballot boxes sealed) in these applications. Equally, this decision does not rest in any way upon the assertion by the Labourers that it was somehow inappropriate for the Association "to plead the case on behalf of the employer as to appropriate constitutional jurisdiction" because that supposedly was contrary to the decision of the Supreme Court of Canada in *Transair Ltd.* [1977] 1 S.C.R. 722 or the principle of *jus tertii*. Even if I somehow found merit in that assertion, the simple fact is that Expercom joined in and adopted the submissions made by the Association and there can be no question of Expercom's own ability to raise this question – had it been done in an appropriate and timely fashion.

(ii) The Merits of the Constitutional Issue

49. If I am wrong and the Board ought to entertain the constitutional question raised by the Association and Expercom, I would find this application is within the constitutional jurisdiction of the Ontario Labour Relations Board in any event. The most recent pronouncement on constitutional jurisdiction with respect to labour relations is the Supreme Court of Canada decision in *Tessier Ltée v. Quebec (Commission de la santé et de la sécurité du travail), supra*. The law is succinctly stated in the head note:

> "Labour relations is presumptively a provincial matter. However, the federal government has jurisdiction to regulate employment in two circumstances; when the employment relates to a work, undertaking, or business within the legislative authority of Parliament; or when it is an integral part of a federally regulated undertaking, sometimes referred to as derivative jurisdiction. In the case of derivative jurisdiction, the essential operational nature for work, business or undertaking is assessed to determine if that ongoing nature renders the work integral to a federal undertaking. The exceptional aspects of the enterprise do not determine its ongoing character…
>
> Federal labour regulation may be justified when the services provided to the federal undertaking are performed by employees who form a functionally discrete unit that can be constitutionally characterized separately from the rest of the related operation. If the employees performing the work do not form a discrete unit and they are fully integrated into the related operation, then even if the work of those employees is vital to the functioning of a federal undertaking, it will not render federal an operation that is otherwise local, if the work represents an insignificant part of the employees' time or as a minor aspect of the essential ongoing nature of the operation."

50. The Association and Expercom submit that Expercom carries out:

> "…work that was an integral part of the operation of the communications system at Bell Canada, a federal operation. There can

> be no question Expercom Telecommunication Inc. is undertaking activities (whether described as repair, maintenance or expansion) which are integral, vital and essential to the operation of Bell Canada and to Bell system."

51. Notwithstanding various submissions from the parties that it may be necessary to hear additional evidence on this constitutional question, I do not think so. The significant facts (regardless of how the parties seek to characterize them) are either not in dispute or were agreed to at the hearing (See paragraph 3 above).

52. There is no dispute, whatever their status, that the bargaining rights of the Association were originally acquired as a result of a certificate issued by this Board. There is no dispute (regardless of its precise quantification) that work for Bell Canada represents the substantial portion of the work of Expercom. There is no dispute that the labour relations of Bell are federally and not provincially regulated. However, there is equally no dispute (regardless whether there is agreement as to its precise quantification) that Expercom performs work for other employers that are not federally regulated (e.g., Peterborough Hydro). Equally, there is no dispute that the business that Expercom does for Bell is not constant. In fact, one of the reasons as explained by both the Association and Expercom for the negotiation and execution of the second collective agreement discussed above, was to secure more future work from Bell. There is no dispute that Bell does not own or operate Expercom. It is a separate and independent company. Although the system may be owned by Bell there is no dispute that the services for it are not performed at Bell premises. There is no dispute that regardless of whether the work that Expercom does for Bell is characterized as repair or maintenance, once it is completed employees of Expercom do not play any part in the actual operation of the Bell Network. There is no dispute that the actual connection of the work that Expercom employees perform for the Bell Network is performed by Bell's own employees not Expercom (just like for other of Expercom's customers). In fact, there is no dispute that the work that Expercom now performs for Bell was previously performed by other contractors who are provincially regulated.

53. The Association (and Expercom) point me to the Board's decision in *Canadian Communications Structures Inc.* [1992] OLRD No. 3375. In that case the Board concluded that CCSI, a subcontractor to Bell Cellular (the federal undertaking) which exclusively installed, maintained and erected structures for the cellular phone transmission systems, was a vital and integral part of the federal undertaking (it had no other customers) at paragraph 36 and 37:

> 36. Viewed in this light, we find extensive physical and operational connection between the two, to the extent that CCSI's function is, in our view, integral to that of the undertakings of the cellular phone companies it services. The antenna and cable portion of the cellular phone system is agreed to be essential to the system and integral to it once installed. CCSI has regular contact with that system in a number of roles: installation, manipulation, testing, replacing, inspecting, always on the phone companies' sites. Although much of the work, preparatory and maintenance, is done in the absence of Bell Cellular personnel, it is all done to the detailed specifications of the cellular phone companies. Those aspects most directly relating to the transmission system are done under Bell Cellular's direct supervision. Thus, on the fourth criterion, we find the evidence to support federal jurisdiction. None of the other three detracts from this support.
>
> 37. To acknowledge that the location of these antennae requires elaborate support structures, which must be built and climbed, is not to make the purpose of the exercise any different. To acknowledge that

> from the point of view of the employee climbing steel at 150 feet, this project may seem like any tower erection project, does not answer the crucial constitutional question: how important is this work to running a cellular phone system? All of the evidence indicates that it is vital…

However, even in that case the Board had to distinguish the then leading Supreme Court of Canada decision of *Construction Montcalm Inc. v. The Minimum Wage Commission et al* 1978 CanLII 18 (SCC), [1979] 1 S.C.R. 754, which held that a construction company that built an airport was not within federal jurisdiction just because it was building an airport which was federally regulated. The Board in *CCSI* sought to distinguish *Montcalm* at paragraphs 39 and 40:

> 39. By contrast, the Construction Montcalm facts are very different from those before us. That company was a construction company presumed by the Court to have had a number of clients and projects over time. It was clear that once finished its work, the construction company would have nothing to do with the airport again. Each time CCSI hands over a supported transmission system, capable of functioning, there is a similarity. However, that similarity loses its force for constitutional purposes when one looks at the regularity of the work on the system, in its several varieties, including the inspection work and the jobs that flowed from it.
>
> **40. We have carefully considered all the authorities and arguments cited and find those which found provincial jurisdiction distinguishable. One distinction is the difference between operations whose only reason for being is to service a federal undertaking and those where servicing the federal operation is only one facet of the local operation. See on this point *Loomis Messenger Service*, [1985] OLRB Rep. July 1131. These include *Vibration Assessment Limited*, where an independent blast monitoring consultant was found to be within provincial jurisdiction as incidental to construction, despite its work monitoring the construction and installation of a Bell cable along a Trans Canada Pipeline right of way. Cases of infrequent construction or reconstruction such as *Re. Canada Labour Code*, where railway bridges were replaced or *Peter Kiewit*, where a canal lock was rehabilitated, are to be distinguished on the basis of the exceptionality of the work and the closer analogy to the facts in *Construction Montcalm* which one could describe as pure construction, which is not the case before us. *The Ontario Energy Board* and *Consumers' Gas Co.*, and *Canada Telecommunications Group* cases are to be distinguished on the basis of their not being integral to the federal undertaking, but a service to the customers of the federal undertaking. In *W. Rourke Ltd.*, where contractors who spent 90 percent of their time exposing cable for repair by Bell was found analogous to the construction work in *Construction Montcalm*, the Board said the result might have been different if the contractors were working on existing lines. Here CCSI employees are working on existing lines, and are far more extensively involved in the general upgrading of the cellular system than the employees in that case.**

54. In fact, I believe that it is these cases – *Montcalm* and the cases that follow it - that are actually more apposite and ought to govern here. In particular, the decision in *W. Rourke Ltd.*, [1983] OLRB Rep. October 1711 seems almost virtually identical and directly on point:

> 3. The respondent is a construction company headquartered in the City of Quebec. Although most of the respondent's work is performed in the Province of Quebec, it is also active in the city of Ottawa and surrounding areas in the Province of Ontario. Fully, ninety per cent of the respondent's work in Ontario is performed pursuant to a contract with Bell Canada, a firm both parties agree is a federal work or undertaking whose employees come within federal jurisdiction for labour relations purposes. Approximately half of the respondent's work for Bell Canada involves trenching and the installation of new telephone cables. The cables are actually "hooked up" to Bell Canada's existing lines by Bell Canada craft employees. The other half of the respondent's work for Bell Canada is related to the repair of existing underground cables. Generally the respondent's employees do no more than expose the cable so as to enable Bell Canada employees to perform the actual repair work. On occasion, the respondent's employees do remove lengths of old cable, and then install new replacement cable. Before the old cable is removed, however, it is first disconnected by Bell Canada employees, and it is Bell Canada employees who later hook the new cable into the Bell Canada system.
>
> 4. Approximately ten per cent of the respondent's work in Ontario is performed for two cable television companies and for Ottawa Hydro. This work involves laying conduit and underground cable, with the procedures apparently being similar to those involved with the Bell Canada work. The respondent was not challenged when it contended that the two cable television companies fall under the regulatory control of the federal government, although it acknowledged that Ottawa Hydro does come within provincial jurisdiction.

55. The Board then extensively referred to the decision of the Supreme Court in *Montcalm*:

> 6. One of the first principles of Canadian Constitutional Law is that the Federal Government has no general jurisdiction over labour relations, but rather such general jurisdiction lies with the provincial legislatures. See: *Toronto Electric Commissioners v. Snider* (1925) A.C. 396. Parliament does, however, have authority over labour relations where such authority is an integral element of its primary competence over some other federal subject. See: *In the Matter of a Reference as to the Validity of the Industrial Relations and Disputes Investigation Act* (1955) S.C.R. 529 ("the Stevedoring case"). The Supreme Court of Canada dealt with the constitutional status of construction companies in *Construction Montcalm Inc. v. The Minimum Wage Commission* 79 CLLC ¶14,190. The employer in that case was a construction company engaged in building the runways at Mirabel Airport in the Province of Quebec. In response to a claim by provincial authorities that Quebec's minimum wage laws and regulations were applicable to its employees, the employer submitted that Parliament's exclusive jurisdiction over aeronautics meant that labour relations matters affecting its employees came under federal jurisdiction. BeetzJ, on behalf of a majority of the Court, rejected that submission as follows:
>
>> "The construction of an airport, it was argued is as much a matter for exclusive federal control as the construction of a federal railway.

> In my view, the main submission is not supported by the principles enunciated above: it does not meet the test set out in the *Stevedoring case* (1955) S.C.R. 529 according to which Parliament has no authority over labour relations except insofar as such authority is an integral element of its primary jurisdiction over some other matter; furthermore, it implicitly but clearly ignores the requirement of the *Agence Maritime* and *Letter Carriers'* cases that an undertaking, service or business be not characterized as a federal or provincial one on account of casual factors.
>
> The construction of an airport is not in every respect an integral part of aeronautics. Much depends on what is meant by the word "construction". To decide whether to build an airport and where to build it involves aspects of airport construction which undoubtedly constitute matters of exclusive federal concern...This is why decisions of this type are not subject to municipal regulation or permission. . . Similarly, the design of a future airport, its dimensions, the materials to be incorporated into the various buildings, runways, and structures, and other similar specifications are, from a legislative point of view and apart from contract, matters of exclusive federal concern. The reason is that decisions made on these subjects will be permanently reflected in the structure of the finished product and are such as to have a direct effect upon its operational qualities and, therefore, upon its suitability for the purposes of aeronautics. But the mode or manner of carrying out the same decisions in the act of constructing an airport stand on a different footing. Thus, the requirement that workers wear a protective helmet on all construction sites including the construction site of a new airport has everything to do with construction and with provincial safety regulations and nothing to do with aeronautics. See *Regina v. Beaver Foundations Ltd.* (1968) 69 D.L.R. 649 and *Regina v. Concrete Column Clamps (1961) Ltd., Regina v. Louis Donolo Inc.* (1972) 1 O.R. 42. See also *Re United Association of Journeymen, etc., Local 496 and Vipond Automatic Sprinkler Co. Ltd.* (1976) 67 D.L.R. (3d) 381, where Cavanagh J. of the Alberta Supreme Court held that "the fact of construction of a building called an air terminal does not...show that the construction is connected with aeronautics" and that while an aerodrome is a federal work, employees constructing such a building are subject to provincial labour relations. In my opinion what wages shall be paid by an independent contractor like Montcalm to his employees engaged in the construction of runways is a matter so far removed from aerial navigation or from the operation of an airport that it cannot be said that the power to regulate this matter forms an integral part of primary federal competence over aeronautics or is related to the operation of a federal work, undertaking, service or business
>
> . . . .
>
> In submitting that it should have been treated as a federal undertaking for the purposes of its labour relations while it was doing construction work on the runways of Mirabel, Montcalm postulates that the decisive factor to be taken into consideration is the one work which it happened to be constructing at the relevant time rather than the nature of its business as a going concern. What is implied, in other words, is that the nature of a construction undertaking varies with the character of each construction project or construction site or that there are as many construction undertakings as there are construction projects or

> construction sites. The consequences of such a proposition are far reaching and, in my view, untenable: constitutional authority over the labour relations of the whole construction industry would vary with the character of each construction project. This would produce great confusion. For instance, a worker whose job it is to pour cement would from day-to-day be shifted from federal to provincial jurisdiction for the purposes of union membership, certification, collective agreement and wages, because he pours cement one day on a runway and the other on a provincial highway. I cannot be persuaded that the Constitution was meant to apply in such a disintegrating fashion.
>
> To accept Montcalm's submission would be to disregard the elements of continuity which are to be found in construction undertakings and to focus on casual or temporary factors, contrary to the *Agence Maritime* and *Letter Carriers'* decisions. Building contractors and their employees frequently work successively or simultaneously on several projects which have little or nothing in common. They may be doing construction work on a runway, on a highway, on sidewalks, on a yard, for the public sector, federal or provincial, or for the private sector. One does not say of them that they are in the business of building runways because for a while they happen to be building a runway and that they enter into the business of building highways because they thereafter begin to do construction work on a section of a provincial turnpike. Their ordinary business is the business of building. What they build is accidental. And there is nothing specifically federal about their ordinary business."

7. A case similar in certain respects to the one now before us came before the Saskatchewan Court of Queen's Bench in *Henuset Rentals Ltd. v. United Assoc. Journeymen and Apprentices et al.* 79 CLLC ¶14,194. In that case, it was argued that the Saskatchewan Labour Relations Board had erred in deciding that it had jurisdiction to certify a union to represent employees of a firm engaged in the construction of an interprovincial pipeline. It was the employer's position that the construction work formed an integral part of an interprovincial undertaking and, hence, came within federal jurisdiction. The Court, relying on the Supreme Court of Canada decision in *Montcalm Construction*, rejected this contention, and concluded that while the operation of an interprovincial pipeline comes within federal jurisdiction, its construction does not. We would also refer to the decision of the Federal Court of Appeal in *Canada Air Line Employees' v. Wardair Canada (1975) Ltd. et al* [1974] 2 F.C. 91, where it is stated:

> "A particular activity may be reasonably incidental to the operation of a federal work, undertaking or business without being an essential component of such operation. For example, an interprovincial railway may have its own laundry facilities or its own arrangement for preparing food for passengers, or, alternatively, it may send its dirty linen to an outside laundry or buy prepared food. Generally speaking, where such an activity is carried on by the operator of the federal work, undertaking or business as an integral part thereof, it is indeed a part of the operation of the federal work, undertaking or business. Where, however, the operator of the federal work, undertaking or business carries on the operation thereof by paying ordinary local businessmen for performing such services or for supplying such commodities, the business of the person performing the service or preparing the commodities does not thereby automatically become transformed into a

> business subject to federal regulation. Compare the decision of the Supreme Court of Canada in the *Construction Montcalm* case (1979) 25 N.R. 1, that was delivered last December."
>
> 8. On the basis of the above noted cases, we tend to view that if the work in question was being performed by direct hire employees of Bell Canada and the two cable companies as an integral part of their businesses, then the work would come under federal jurisdiction. However, Bell Canada and the cable companies are not performing the work themselves but have instead contracted with the respondent to perform it. There is nothing especially "federal" about the work which the respondent performs, especially since it is not involved in hooking up cables to existing lines. The result might be different if the respondent's employees actually did maintenance and repair work on existing Bell Canada telephone lines. Such work is, however, performed by Bell Canada employees, the respondent's employees doing no more than exposing the cables. While the respondent's employees do at times replace lengths of existing cable, it is Bell Canada employees who disconnect the old cable and then later connect the new cable to the Bell Canada system. We view all of the work performed by the respondent's employees as the type of construction work covered by the reasoning of the Supreme Court of Canada in *Montcalm Construction*; and accordingly, conclude that the employees come within provincial jurisdiction for labour relations purposes.

56. In my view, it is really *Rourke* that is indistinguishable from Expercom. Notwithstanding all of the jurisprudence on the constitutional competence over labour relations (most of which was not cited to me either by the Association or Expercom), I find the relatively straightforward analysis of *Montcalm* and the many cases that follow it (like *Rourke* and *Henuset*) the applicable (and correct) one – a general construction company whether building an airport or a telephone line has only a "casual" (in the words of the jurisprudence) relationship with its federal customers which cannot alter the constitutional authority over its regular line of business. Would the result in *Montcalm* have been different if the construction company had built many airports, or become specialized and built airports exclusively? I do not accept that provincially regulated construction companies transform themselves to federally regulated because they seek out federally regulated customers (regardless of how successful they are in securing those federally regulated customers, or, in other words, the number that they have) – nor do I think such a result is dictated by the jurisprudence. For all of the reasons set out in *Montcalm, Henuset* and *Rourke*, to find constitutional authority to be continually "morphing" (or in the words of Beetz J. in *Montcalm* "disintegrating") depending on the success of a construction company in obtaining federal customers is disastrous for clear, consistent, comprehensible labour relations (or jurisprudence for that matter).

57. The Association and Expercom have gone to great lengths to characterize themselves as not a construction company (whether the argument is repair vs. maintenance which was dealt with *supra* and been rejected) but rather characterize themselves as a telephone communications company. Regardless of how Expercom or the Association wish to characterize themselves, the indisputable fact is Expercom employees do not operate the Bell network, they provide services to it – services which ironically were previously provided by provincially regulated employers; services which Expercom provides (admittedly in varying and apparently diminishing amounts) to other customers; services which have only recently increasingly been provided to Bell and in fact for that very purpose (to lure Bell's business) Expercom and the Association actually amended (improperly as I have determined above) their collective agreement.

58. Equally, the Association argues (unpersuasively) the activities of Experom's employees are "integral or vital" to the federal work or undertaking, the Bell system, because:

> (a) "The repair and/or maintenance are inextricably linked to the operation of that system. Without it the system cannot continue to operate".
>
> But that could be equally said of the initial construction of the system – which in the case of the construction of an airport, the Supreme Court has already said in *Montcalm* is not integral to the federal undertaking (at least in terms of constitutional law). See the earlier quoted portions of *Moncalm*, or *Wardair* in para. 54 *supra*.
>
> (b) "Bell Canada determines the nature of the work being undertaken, the specifics of the work, the planning of the work, location of the work, and both directly and indirectly oversees its performance in accordance with other dates set by Bell".
>
> Even assuming this to be accurate (and not overstated), the same could be said of any customer having a construction company build a specific project – like an airport.

59. As well, the Labourers and IUOE have referred me to a number of other cases that have found provincial jurisdiction in these circumstances, (besides *Construction Montcalm Inc. v. Minimum Wage Commission*):

> *CGT Telecommunication Systems Inc.* [1985] OLRB Rep. February 182; *Washuk Pipeline Construction v. General Teamsters Local No. 362 et al.* (1988) 92 A.R. 71 (Alta. Q.B.); *Caterair Chateau Canada Ltd.*, [1995] OLRB Rep. May 633; *Pomeroy v. JP Cable Installations Ltd.* [2001] C.L.A.D. No 207 (Gandz); *Technical Service Solutions Inc. v. Pierce (Anderson)* [2001] C.L.A.D. No. 509; *Johnson v. Faria Distributing Inc.* [2005] C.L.A.D. No. 80 (Bendel); *Correia v. Conex Cable Technology Specialists Inc.* [2007] C.L.A.D. No. 483 (Verity); *Jones v. Cancable Inc.* [2008] C.L.A.D. No. 132.

60. A number of those cases deal specifically with wiring and telephone equipment for Bell. The suggested distinctions that the Association attempts to make from those cases are not particularly persuasive. The distinctions are really irrelevant or minor. For example, in *CGT Telecommunication Systems Inc.*, the Association argues the employees "did not spend any of their time working on Bell premises and the equipment they installed was not thereafter owned or under direct control of Bell". Even if that were germane, it does not appear that, other than the system which remains owned by Bell, any of the work of Expercom is actually performed "on Bell premises". Equally, in *Pomeroy v. JP Cable Installations Ltd.*, where the employer was "solely involved as an installer of coaxial cable, telephone wiring and computer cables in new homes under construction", it is not particularly significant that the work was "predominantly within the homes and not to the homes, nor upon the systems supplying the homes" as the Association argues. This appears to be a distinction without a difference.

61. Simply put, and to reiterate, it appears to me that it does no service to the constitutional jurisprudence, to the labour relations community, or to the functioning of the Board, that:

> (a) an employer whose employees have been certified by this Board (with the obvious concurrence, at least insofar as constitutional authority is concerned, of the employer and that union);
>
> (b) which continues to carry on essentially the same business;

(c) then obtains the business (or increasing business) of a federally regulated entity;

(d) which business it obtains by replacing another competing provincially regulated employer;

(e) should then be permitted to argue in the face of subsequent displacement certification applications by another trade union before the very same provincial board that circumstances have now changed and it is now a federally regulated entity.

In my view, that is just not tenable. That serves neither sound labour relations nor any comprehensible constitutional jurisprudence. Accordingly, in these circumstances, if it is required, I find that the activities of Expercom are subject to provincial regulation.

(d) Next Steps

62. Further hearing dates have been scheduled for August 9, 22 and 24, 2012 with the agreement of the parties. Having now determined:

(a) Expercom is engaged in the construction industry;

(b) that the second collective agreement with the Association is not a bar to these certification applications; and

(c) that this is within the constitutional jurisdiction of this Board,

the next issue to be determined is whether the construction industry bargaining rights that the Labourers and the IUOE seek are presently occupied. In other words, are these displacement applications? Once that is determined, and to some extent arguably dependent on (if not largely determined by) that, the next issue appears to be what are the appropriate bargaining units. Having determined those issues, it appears that many, if not all, of the individual status disputes may fall by the wayside.

63. Accordingly, all parties are directed to make written submissions to the Board with respect to whether the Association holds construction industry bargaining rights and whether these are displacement applications within ten (10) business days of the date of this decision. Those submissions ought to address whether any *viva voce* evidence is required to determine that issue (and if so, what the nature of that evidence is). At this juncture, it seems unnecessary, or any of the evidence is not seriously in dispute. Each party shall have further five (5) business days to respond to the other parties' submissions.

64. If any party disagrees with this analysis of how the issues should be dealt with (or somehow, at this juncture, has other issues that need to be addressed that it has not already raised) submissions with respect to those issues should be included in their submissions as well. I am not seized to determine these next issues.

0736-09-U Graham Bros. Construction Limited, Applicant v. Labourers' International Union of North America, Ontario Provincial District Council and International Union of Operating Engineers, Local 793, Responding Parties.

Certification – Construction Industry – Intimidation and Coercion – Representation Vote – Unfair Labour Practice – The employer alleged that during an organizing campaign certain union organizers told individuals that if they joined the union now they would have to pay $50 to join, whereas if they joined later it would cost a lot more – The Board noted that there is nothing inappropriate with a trade union having a two-tiered initiation fee structure *provided* the lower initiation fee is made available to all employees of the employer at the time of certification and not only to those who signed an application for membership card in advance of the union's certification – Where individuals are told they will be required to pay more later, the Board is unable to determine if the individuals signed the card because they wanted to join the union or because they wanted to avoid having to make a larger payment – After hearing the evidence of five employees, the Board found each witness to be credible and their evidence to be plausible – The union organizer, who was available, did not testify – Accordingly the Board found that the union organizer had made the alleged statements – The Board found the jurisprudence to be clear: in these situations a cloud is cast over the reliability of the membership evidence – Finally, the Board noted that even though only five employees came forward, the Board was unable to determine the extent to which the employees of the employer were aware of the statements made by the organizer, but inferred that since the organizer collected at least 25% of the cards, the statements were more than likely made to more than five individuals – In these circumstances, given the reliability of the membership evidence was in doubt, the Board found it appropriate to order another representation vote – Application granted; matter continues

BEFORE: *Diane L. Gee*, Alternate Chair.

APPEARANCES: *David I. Wakely, Robert Bell, Alfredo Maddio* and *Ken Richardson* for the applicant; *Ernie Schirru, Doug Serroul*, and *Gaetano Strazzanti* for the Labourers' International Union of North America, Ontario Provincial District Council; *Kirsten Agrell* and *Ken Lew* for International Union of Operating Engineers, Local 793.

DECISION OF THE BOARD: June 25, 2012

1. This matter is an application under section 96 of the *Labour Relations Act, 1995* (the "Act") filed by Graham Bros. Construction Limited ("Graham Bros." or the "Employer") in which it is alleged that the Labourers' International Union of North America, Ontario Provincial District Council (the "Labourers") and the International Union of Operating Engineers, Local 793 ("Local 793") engaged in conduct in connection with an organizing drive that violates section 76 of the Act. It is the allegation of Graham Bros. that union organizers, when trying to persuade Graham Bros. employees to sign an application for membership card, told employees that the union had sufficient membership support to be certified; if the individual signed a card they could join the union for $50.00; if they did not sign a card, once the union was certified they would be required to join the union in order to keep working and it would cost them much more.

2. This matter is related to an application for certification filed by the Labourers in Board File No. 2504-08-R. The Labourers and Local 793 conducted a joint organizing campaign of the labourers and operating engineers employed by Graham Bros. Each union filed an application for certification. Local 793 subsequently withdrew its application.

3. The history of the Labourers' application for certification has been long and complex. Numerous issues have been raised and numerous decisions have been issued. The most recent development in the Labourers' certification application is that the Board determined that the union had 63 membership cards and there is a maximum of 114 employees on the employee list. The Board found the Labourers to be in a certifiable position regardless of the outcome of the Labourers' outstanding 50 challenges to the employee list. For that reason, the Board ceased enquiring into the remaining challenges. No certificate has been issued to the Labourers as a result of the instant application.

4. In the instant matter, the Employer acknowledges that a member of senior management, Ken Richardson, and external counsel, Robert Bell, met with a number of employees of Graham Bros. and directly asked them about their interactions with union organizers. In the normal course such conduct on the part of an employer would be highly inappropriate and, in and of itself, would most likely constitute a violation of the Act. No employer should be calling employees into closed door meetings and questioning them about their interactions with a union organizer. The meetings that are discussed in this decision were part of an investigation conducted by the Employer as a result of highly unusual circumstances that led the Employer to have reasonable cause to be concerned about the reliability of the membership evidence that had been filed with the Board. Perhaps as a result of the manner in which the meetings came about, the union did not allege that the meetings themselves were a violation of the Act. As is discussed in greater detail below, the union does, however, strenuously argue that the fact that the allegations arose out of such meetings renders the evidence given by the employees in this matter unreliable.

5. For ease of comprehension, an explanation of what is commonly referred to as "two-tiered" initiation fees is useful. Construction industry trade unions charge individuals a fee for becoming a member of the union. The fee charged is known as an "initiation fee". The evidence in this case suggests that the initiation fee charged by the Labourers is in the range of $500.00 and the initiation fee charged by the Operating Engineers is in the range of $875.00. It is not unusual for a construction trade union to reduce its initiation fee for organizing purposes. This entails permitting employees of a newly certified employer to join the union at a much reduced rate. Both the Labourers and the Operating Engineers reduced their initiation fee to $50.00 in respect of the Graham Bros. organizing campaign. The existence of two different initiation fees, a higher fee for individuals who walk in off the street and wish to join the union, and a lower fee for individuals who join the union as a result of the union organizing their employer, is what is commonly known as a two-tier initiation fee. In the context of a union organizing campaign, the initiation fee is not paid by the employee at the time of signing an application for membership card. The initiation fee is only paid if and when the union acquires bargaining rights and the employee is accepted into membership.

6. In the construction industry, where an employers' organization has become accredited pursuant to section 136 of the Act, the collective agreement that such organization negotiated with the respective trade union automatically applies when the trade union acquires bargaining rights in respect of employees of an employer performing work falling within the scope of the collective agreement. In the instant matter, if the Labourers' were certified, Graham Bros. would automatically become bound by the Toronto Area Road Builders Agreement (the "TARBA agreement"). The TARBA agreement contains a provision that requires an individual to be a member of the Labourers in order to perform bargaining unit work. As such, there is no dispute in the present preceding that, if the Labourers were successful in getting certified, employees of Graham Bros. would be required to become members of the Labourers in order to work for Graham Bros. as a labourer.

I. The Law

7. The Board has held that there is nothing inappropriate with a trade union having a two-tiered initiation fee structure *provided* the lower initiation fee is made available to all employees of the employer at the time of certification and not only those employees who signed an application for membership card in advance of the union's certification. It has further been held that employees cannot be led to believe otherwise. Where an employee is led to believe that they can join the union for $50.00 if they sign a card during the organizing campaign but, if they don't, they will have to pay a larger amount in order to keep working for their employer following the union's certification, the Board is unable to determine if the individual signed the card because they wanted to join the union or because they wanted to avoid having to make the larger payment. A cloud is cast over the reliability of the membership evidence.

8. Where it is established that an employee was told, or was led to believe, that the lower initiation fee was only available if they signed a card, the cases have placed significance on whether the representation was made by a union organizer or a rank and file employee when deciding whether the validity of the membership evidence has been cast into doubt. In the instant case, there is no dispute that, if the representation was made, it was made by a union organizer and not by a rank and file employee.

9. The case of *Leon's Furniture Limited*, [1982] O.L.R.B. Rep. March 404 ("*Leon's*"), decided by then Chair Adams and Board Member Cooke, contains a summary of prior Board jurisprudence involving allegations of two-tier initiation fees or threats to an employee's job security by an organizer. Most of the prior jurisprudence involved allegations of comments made by an employee organizer and not a union organizer. One notable exception is the case of *Alex Henry* summarized by the Board in *Leon's* as follows:

> 19. In *Alex Henry* a full-time union organizer associated with Mr. O'Donnell's local was found to have told employees at a meeting "that they could join the union at that time for a fee of two dollars but that if they joined at a later date it would cost them fifty". An employee called by the respondent testified that he took that statement to mean that if the applicant was successful in its certification drive those employees who did not join prior to certification and who wanted to retain their jobs afterwards would be required to join the union at the higher initiation fee. The union organizer failed to clarify that this would only be so if a compulsory union membership clause was negotiated and where the union was unwilling or unable to waive the higher fee. The union organizer was present at the hearing but did not testify to explain or refute the allegation. The Board feared that the statement raised a real misapprehension among employees as to their rights in respect of the trade union. The Board noted:
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> > 10. We are not, however, satisfied that the statement might not have raised a real misapprehension among the employees as to their rights in respect of the union. A reasonable employee hearing Mr. Reilly might well have concluded that upon the union being certified he would have no alternative but to pay the higher fee if he wanted to keep his job. An employee forming that view might have signed a membership application as a result of what amounts to a tacit misrepresentation on the part of the union representative.
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> > 11. The Board's consistent policy in certification proceedings has been to require the highest standard of integrity on the part of union officers in the soliciting, gathering and presentation to the Board of documentary evidence in support of their application. Since that

> > evidence remains confidential, is not subject to cross-examination and is the principal evidence on which the Board must rely in certification proceedings, it must be free of any cloud or taint. If, in view of the circumstances touching the soliciting and collecting of the membership evidence, the Board is left in doubt it may use its discretion to order a representation vote to resolve that doubt.
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> > 12. A union officer is under a duty to refrain from making false or misleading statements in the course of an organizing campaign. We find that the statement of Mr. Reilly, which might better be termed a half-statement, is latently, if not patently, misleading. His failure to explain his statement to the employees by omitting to say that the higher initiation fee would be forced on them only if the union could succeed in its application for certification, could thereafter successfully negotiate a union shop contract with the employer and would at that time be unable or unwilling to waive the higher initiation fee, leave this Board in some doubt as to whether employees for whom membership evidence was filed were in fact misled and therefore unable to fairly weigh the meaning of Mr. Reilly's statement as it might affect them. This raises some doubt as to whether the membership evidence filed is an expression of the true wishes of the employees.
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> 20. While there had been no explicit linking of the higher initiation fee to an employee's job security, the Board found that an employee might reasonably see this link and therefore held that the full-time union organizer is under a duty to explain in detail how his statement might come to pass. Once having raised a topic that relates to job security and amounts to a significant financial enticement, there is an affirmative obligation on the organizer to be totally candid. Therefore, in *Alex Henry* the Board concluded that the bald statement "$2.00 now or $50 later" crosses the boundaries of acceptable salesmanship. However, instead of prohibiting a two tier initiation fee structure for the purposes of an organizing campaign, the Board has instead required complete disclosure on how it would impact on the employee who refuses to sign a membership card before the trade union is certified. This, it seems to us, is a reasonable approach given the reality that many trade unions customarily reduce their initiation fees for the purposes of organizing campaigns.

10. In *Alex Henry*, the union would not be in a position to require employees to join the union and pay an initiation fee unless and until it was certified and negotiated a collective agreement with the employer that contained a provision requiring employees to be union members. The Board, in *Alex Henry*, found that the union was permitted to have a two-tier initiation fee structure but had to be clear with employees about the circumstances under which the higher fee could potentially become payable. Employees could not be misled into believing that the higher fee would become payable once the union was certified. The Board ordered the taking of a representation vote. It was in subsequent decisions of the Board, including *Leon's*, that, the Board ruled that a union must make the lower initiation fee available to all employees of the employer employed at the time of certification and not only those who sign a card.

11. As in *Alex Henry*, the allegations in *Leon's* itself were that a union organizer told two employees "it was $5.00 now or $55.00 later". At paragraph 10 of *Leon's*, the Board explained why such a comment may be of concern to the Board:

> 10. The statute permits the Board to certify applicant trade unions to represent employees based upon written authorizations involving the payment of at least $1.00 where such "membership documents" are properly executed and witnessed and where the application is supported by a declaration made by a knowledgeable official, declaring that the monies were paid as the membership documents indicate. See for example Form 9 and sections l(l)(l) and 103(2)(j) of the Act. Thus, the Board relies on the execution of such membership evidence as an indication of the true wishes of employees and where more than 55 percent of the employees in the bargaining unit are members of the trade union, the Board will usually certify the applicant without a representation vote. However, because of the "hearsay" quality of membership cards, a fact demanded by the membership secrecy section of the Act (see section 111(1)), conduct by organizers that obscure [sic] the primary reason why an employee signed a membership card is of concern to the Board. Misrepresentations, coercion and intimidation leading to the execution of membership evidence all undercut the reliability of such evidence as a true indication of the voluntary wishes of employees. On the other hand, the intricacies of collective bargaining can be difficult to explain and the organizing process undoubtedly involves controversy and salesmanship. Organizers are often inexperienced rank and file members.

12. At paragraph 11 of *Leon's* the Board explained where the line had been drawn when assessing conduct on the part of union organizers during an organizing campaign:

> 11. The board has drawn the line of regulation between salesmanship and improper conduct at fundamental misrepresentation, coercion and intimidation. Such conduct, when engaged in by trade union officials, will usually result in the Board's refusal to rely on any of the membership evidence submitted whereas the involvement of rank and file supporters may cause the Board to reject only the membership evidence handled by such persons. The latter depends upon the state of knowledge of trade union officials and their related conduct to rectify matters if they were aware of the improper conduct. The Board has not attempted to lay down standards of conduct aimed at responding to confusion and misunderstanding. Rather, it has tried to strike a balance between competing interests by censuring conduct that could deter, coerce or mislead the reasonable employee. The reduced payment before certification has been viewed by the Board as a borderline tactic which has sometimes crossed the line of acceptability.

13. In *Leon's* the Board made the following statement concerning the allegation before it that a union organizer told employees "it was $5.00 now or $55.00 later":

> 24. O'Donnell is a full-time organizer. The Board has concluded that the alleged representation when employed by such an official is sufficiently coercive and distracting to the reasonable employees that a representation vote should be directed to eliminate any doubt over the true wishes of the employees. Accordingly, if the evidence adduced by the respondent establishes the allegations made before us, a representation vote should be directed. We are in full support of the *Alex Henry* principle.

14. For reasons set out by the Board in the remainder of the *Leon's* decision, the Board found that the statement was not in fact made by the union organizer.

15. A later decision in which the Board considered allegations of comments by a union organizer made during the course of a union organizing campaign concerning the union's two-tiered initiation fee structure is the case of *Venture Industries Canada, Ltd.*, [1989] OLRB Rep. Oct. 1074 ("*Venture Industries*"). In the course of a thorough review of the jurisprudence on point, the Board reached a number of conclusions concerning the appropriateness of a two-tier initiation fee structure. At paragraph 39 of the decision the Board states that nothing in the Act prohibits a union from reducing its standard initiation fee during an organizing campaign. However, the Board summarized the jurisprudence to that point in time as insisting that a two-tiered initiation fee structure allow employees employed at the time of the organizing campaign a reasonable opportunity to join the union at the lower initiation fee after it has been determined whether the union will be certified. The reason for this requirement is articulated by the Board as follows:

> 39. … If the higher fee is made to apply before or immediately upon certification of the trade union, there is cause for the Board to doubt whether employees have joined the union of their own free choice, or simply to avoid the risk of being required to pay the full amount of the initiation fee if the union is successful. Thus in *Haughton Graphics*, *supra*, [[1983] OLRB Rep. Sept. 1464] the Board, after reference to *Alex Henry*, [1977] OLRB Rep. May 288, stated at page 1466:
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> The Board [in *Alex Henry*] accordingly sent a clear signal that a "special" initiation fee to eliminate the financial impediment to organizing would continue to be acceptable; but not to the point where the same device may be held out as the threat of a "penalty" to those employees who would refrain from joining prior to the union becoming certified. The union, in other words, must not use this organizing tool in such a way as to cause the Board to doubt whether employees have joined the union of their own free choice, or simply as insurance to avoid the risk of being required to pay the full amount of the initiation fee if the union is successful. The proper question is whether the employees wish to become part of the trade union or not, and organizing campaigns ought to be won or lost on this basis. Any two-level system of initiation fees causes a problem for the Board so long as the higher level is made to apply *before or immediately upon certification of* the trade union. In order to prevent this organizing device from being a distorting factor in assessing employees' true wishes, the two-tiered system must allow all employees employed at the time of the organizing campaign a reasonable opportunity to join for the lower fee *after* it has been determined whether the union will be certified. This is recognized to be already the practice of at least certain of the trade unions in the province, and conformity to it by others would seem to be no more than the Act requires. The practice of the present applicant, in fact, is entirely in conformity with the Board's requirements. The issue which arises here, however, is the manner in which the applicant has communicated its practice to the employees of the respondent.
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> [Emphasis in the original]

16. Thereafter, the Board in *Venture Industries* concluded that, not only must a union's two tiered system permit employees to join at the lower initiation fee after the union has been certified, it must not leave employees with an impression to the contrary:

> 40. Even if the union's practice conforms with the Board's requirements as stated above, the use of the two-tiered system may still be a distorting factor in assessing employees' true wishes if the union by its conduct leaves employees with the impression that its practice is other than it really is. The issue before us therefore is the manner in which the union's practice has been communicated to the employees. Did the practice employed in this instance mislead "the reasonable employee" so that we ought to refuse to rely on all or part of the membership evidence (see *Leon's Furniture Limited,* [1982] OLRB Rep. March 404 at 407), or order the taking of a representation vote.
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> 43. Where a union official attempted "to actively use the [initiation fee] differential as a sales tactic and to leave the impression that employees would be required to pay the higher amount if they did not join the applicant during its organizing campaign", the Board disregarded the membership cards collected by that union official.

17. The application that is presently before the Board is an application pursuant to section 128.1 of the Act. As was the case in *Leon's*, where more than 55% of the employees in the bargaining unit are, or have applied to be, members of the trade union, the Board will usually certify the applicant without a vote. It is no longer necessary, as it was at the time of *Leon's*, for the employee to have paid $1.00. Accordingly, as was the case in *Leon's*, application for membership cards filed by a trade union in an application under section 128.1 of the Act have a "hearsay" quality about them, and conduct on the part of a union organizer that obscures the primary reason why an employee signed an application for membership card is of concern to the Board.

18. Section 128.1(4) of the Act requires the Board to determine the percentage of employees in the bargaining unit who are members of the trade union. Section 128.1(5) of the Act provides as follows:

> **128.1** (5) Nothing in subsection (4) prevents the Board from considering evidence and submissions relating to any allegation that section 70, 72 or 76 has been contravened or that there has been fraud or misrepresentation, if the Board considers it appropriate to consider the evidence and submissions in making a decision under this section.

19. As indicated above, it is the applicant's position that the union, in this case, has contravened section 76 of the Act which provides as follows:

> **76.** No person, trade union or employers' organization shall seek by intimidation or coercion to compel any person to become or refrain from becoming or to continue to be or to cease to be a member of a trade union or of an employers' organization or to refrain from exercising any other rights under this Act or from performing any obligations under this Act.

20. Accordingly, the current provisions of the *Labour Relations Act, 1995* specifically permit the Board to consider whether a union has sought to compel an individual to become a union member by way of intimidation or coercion or whether there has been fraud or misrepresentation on the part of the union in the course of the organizing campaign when deciding the percentage of employees in the bargaining unit who are members of the trade union.

II. The Evidence

21. Five Graham Bros. employees testified in this matter that John Santos, an organizer for the Labourers', approached them with a view to having them sign an application for membership card and told them: the union had enough support to "get in"; if they signed a card they could pay an initiation fee of $50.00; if they did not sign a card they would have to pay a much higher initiation fee later in order to keep working at Graham Bros. Four other employees testified that similar statements were made to them by other organizers from either the Labourers' or Local 793. All of the organizers concerned, with the exception of John Santos, testified in this matter and denied the allegations. Mr. Santos was present as an advisor to Labourers' counsel at the first day of the hearing until counsel for Graham Bros., anticipating that Mr. Santos would be a witness in the proceedings, strongly urged Labourers' counsel to select a different advisor. Mr. Santos thus absented himself from the hearing room and did not return until the day of closing argument. Mr. Santos was available to testify in this matter.

22. For the reasons that are set out below, I find that Mr. Santos made the statements alleged and that as a result of Mr. Santos' comments the reliability of the membership evidence is in doubt. I order the taking of a representation vote. Because I would not make any different order if I were to find the alleged statements to also have been made by the four other union organizers to the remaining four employees who testified in this matter, there is no purpose to be served in my enquiring into the veracity of those allegations. I make no findings herein as to whether the alleged statements were made by any union organizer other than Mr. Santos and nothing I say herein should be construed as impugning their conduct.

23. The extremely unfortunate result of this proceeding is that each of the nine employees who testified revealed whether or not they signed an application for membership card. This information is, pursuant to section 119 of the Act, confidential and is not to be revealed except with consent of the Board. In order not to undermine the confidentiality of the membership evidence any further than has already occurred, each of the employees are referred to in this decision by initials only.

CC

24. In October or November 2008 CC was working as a flag person for Graham Bros. at a road building site in Milton where construction required the traffic to alternatively use a single traffic lane. CC's father was operating the gradeall at the site midway down the traffic lane and her fiancé was acting as the flag person at the other end of the traffic lane approximately 150 yards away.

25. CC testified that a vehicle pulled up to where she was standing and, instead of proceeding into the traffic lane as she had directed it to do, it stopped beside her. The driver of the vehicle was Mr. Santos, an organizer for the Labourers. CC testified that Mr. Santos asked her if she was someone else. She responded she was not. CC could not recall Mr. Santos' exact words but she recalled him telling her his name and that he was with a union.

26. CC testified that Mr. Santos asked her if she had signed a union card. She responded that she had not and that she had no interest in the union. CC testified that Mr. Santos told her that the union "was in" that they "got enough cards signed for the labourers" and she should sign "because it would cost a lot

more once all the paperwork was done for me to join." CC testified that Mr. Santos said if she signed then it was $100.00 and if she didn't, "she might end up on the other side of the fence and might not even have a job." The annual seasonal layoff was approaching. CC testified that she understood Mr. Santos to be saying that, if she didn't sign a card, come spring Graham Bros. might call someone from the hiring hall and she would not be called back to work. The discussion lasted about 30 minutes during which time Mr. Santos remained parked beside CC and she stood a few feet away directing traffic past his vehicle. CC testified that she repeatedly told Mr. Santos that she was not interested and repeatedly told him to move on which he would not do. From where he was standing, her fiancé could see the vehicle sitting beside CC. CC testified that her fiancé was upset about the truck just sitting there for so long and swore at Mr. Santos when he eventually drove away. The foreman was not on the site at the time.

27. CC testified that she rode home that day in the same vehicle as her dad and her fiancé but did not tell them about the discussion on the way home. CC testified that she was focussed on getting home to her kids. She testified she told her fiancé about the discussion she had with Mr. Santos later that day or the next day. CC testified that she believes her fiancé might have told her dad about the discussion she had with Mr. Santos but she never did. CC lived with her dad at the time. CC testified that they "leave work at work." CC testified that she did not report the incident to anyone as she did not feel the need.

28. CC was recalled to work the following season. Sometime after her recall, CC believed it was in May or June 2009, she was called to a meeting with Mr. Richardson and Mr. Bell. There were no other employees present at the meeting. CC believes that she was called to the meeting as her fiancé told management about her discussion with Mr. Santos. CC testified that she was asked "what interaction did I have with the union." She told them about her discussion with Mr. Santos as described above.

29. During cross-examination CC was told that the union's evidence would be that Mr. Santos spoke to her about the union's organizing campaign but the conversation was not 30 minutes long. It was put to her that there was no discussion of any reduced initiation fee to which CC responded "oh yeah there was". It was further put to CC that the union's evidence would be that there was never any communication from Mr. Santos to the witness that Graham Bros. "was union." CC responded "that is a lie". When union counsel put to CC that she knew Graham Bros. was not union as she had previously worked in a unionized workplace she replied "he said there were enough cards signed and the union is in and once the paperwork is done it will be official that is what he said".

30. The only questions asked of CC on cross-examination pertaining to her meeting with Messrs. Richardson and Bell were what she was asked at the meeting and what she told them. CC was not asked during the course of cross-examination whether she, Mr. Richardson or Mr. Bell was the first to raise the issue of the two-tier initiation fee. Similarly it was not put to CC during the course of cross-examination that Mr. Richardson or Mr. Bell suggested to her that the union organizer made the alleged statements and that she was merely adopting their suggestion in order to be seen by the Employer as identifying with its interests.

RZ

31. RZ testified that he was given the business card of a union organizer by one of his co-workers. The card belonged to John Santos. RZ contacted Mr. Santos and set up a meeting with him. RZ did not sign at this meeting. RZ and Mr. Santos met a second time. RZ then signed a card.

32. RZ testified that he and Mr. Santos had a general discussion about what was happening with the union and why the union was approaching workers. The benefits of joining the union were discussed. RZ testified that he asked Mr. Santos about union dues and Mr. Santos responded that there was an initiation fee of $50.00. RZ testified that he wanted to know what would happen if he did not join because

Mr. Santos had told him that "they were already in" or "it was a done deal". RZ testified he asked Mr. Santos "what is the point of my signing if it was a done deal." Mr. Santos responded "it will be $850.00 in the spring to join when union is officially announced. There is a financial benefit to joining now." RZ further testified that Mr. Santos said words to the effect "the advantage is if you join now you will save yourself some money come the spring." RZ testified that he was worried about not having a job. When asked why he was worried about not having a job, RZ testified that when he asked Mr. Santos whether there could be any repercussions towards him if he did not sign Mr. Santos would not answer his question. RZ testified that he is not familiar with unions and he didn't know whether, if he did not join then, he would still be able to join come the spring. RZ testified "I did not know if I did not join at that time if I could join in the spring for $850.00. He would not even answer me that." RZ testified that $850.00 is half a mortgage payment and that "was a lot of pressure to put on an employee".

33. RZ testified that, when he signed a card, Mr. Santos told him that he had a week to think about it. If RZ changed his mind the card would be returned to him. RZ testified that, within the week, he did some research and found out that if the union got in wages might go down. He called Mr. Santos to inform him that he had changed his mind but Mr. Santos never returned his calls. RZ was not at work on the application filing date.

34. During the course of cross-examination it was put to the witness that Mr. Santos never told him that he had to sign a card in order to keep working at Graham Bros. The witness agreed that Mr. Santos never used those exact words. Under cross-examination, RZ agreed that he was concerned about his supervisor finding out that he had signed a card. He testified he was concerned because he was very loyal to his supervisor and his supervisor would be upset that he had not discussed it openly with him before signing a card. After signing the card he told his foreman's son (who also works at Graham Bros.) that he had done so and the circumstances under which he had signed. RZ testified that he probably talked to a whole bunch of people about it because it was pretty much what everybody was talking about. When it was put to RZ that it would be Mr. Santos' evidence that he told RZ that the reduced initiation fee was there for those who signed and for those who were employed when the union was certified, RZ disagreed.

35. RZ testified that sometime after signing a card his foreman's son asked him if he'd be interested in telling his side of the story to someone at the office. RZ agreed. He went to the office and met with Mr. Bell. Mr. Richardson was not present at the meeting. There were no other employees present during the meeting. RZ testified that the purpose of the meeting was to "find out if he had been intimidated." The witness testified that he was not asked if he had signed a card. RZ testified that he volunteered that he had signed. During cross-examination it was put to the witness that Mr. Santos never told him that the union was in a position to be certified. The witness responded "no he definitely told me the union was in a position to be certified."

36. The only questions asked of RZ on cross-examination pertaining to his meeting with Mr. Bell were what he was asked; what he told Mr. Bell; whether he was told he was legally entitled to sign a card; and whether he was advised he could not be punished for signing a card. RZ was not asked during the course of cross-examination whether he or Mr. Bell was the first to raise the issue of the two-tier initiation fee. Similarly it was not put to RZ during the course of cross-examination that Mr. Bell suggested to him that Mr. Santos made the alleged statements or that RZ was advancing the allegations in order to create an excuse for having signed a card.

SS

37. SS testified that union organizers attended at his home one evening. He was in bed when there was a knock on his door. He thought it was his sister. He opened the door and told the person

standing on the door step that the owner of the house was not in. The union organizer said he was looking for SS. The union organizer told SS that Graham Bros. was pretty well guaranteed in the union. He could pay $50.00 now or $700.00 or $750.00 later. SS testified that he then closed the door. SS testified that he thought he would go into work and talk to someone about it as he did not know what a "card" was and it caught him off guard. He didn't know what it all meant.

38. A couple of days later a different union organizer attended at his house around 7:00 p.m. His sister answered the door. When SS went to the door the union organizer told him that he (the organizer) was from Newfoundland and that "we should stick together." SS testified that the union organizer then said "I have a great proposition for you." At which time SS's brother-in-law came to the door and said "I am a foreman at Graham Bros." and kicked him out.

39. SS testified that the union organizers never got into the details of what would happen if SS did not sign a card. SS testified that the guys at work were talking about it and lots of different numbers were being discussed. SS testified that $50.00 was almost always the number on the low end but there were lots of different numbers on the high end. SS testified that he told his foreman about the discussion.

40. During cross-examination SS was told that two union organizers attended at his home the first time: Paul Piercy and John Santos. As is set out below, although Mr. Piercy may have accompanied Mr. Santos to the house, he sat in the truck while Mr. Santos went to the door and spoke to SS alone. SS was told that the union organizer who attended at his home the second time was Hugh Peddle.

41. SS testified that he was called into the office sometime after April of 2009. He drove into the office with a few other employees. They went in and spoke with Mr. Bell and Mr. Richardson one at a time. SS testified that he was asked what had happened and he told them.

42. The only questions asked of SS on cross-examination pertaining to his meeting with Messrs. Richardson and Bell were what he was asked and what he said in response. SS was not asked during the course of cross-examination whether he, Mr. Richardson or Mr. Bell was the first to raise the issue of the two-tier initiation fee. It was similarly not put to SS that the idea of the two-tier initiation fee issue originated during his meeting with Messrs. Bell and Richardson and not, as SS testified, as a result of his discussion with Mr. Santos.

43. Paul Piercy testified that he had been specifically recruited to join the Graham Bros. organizing campaign because he was from Newfoundland as were a number of Graham Bros. employees. It was thought that he would have a good rapport with them. Mr. Piercy testified that, even though SS was from Newfoundland, when he and Mr. Santos went to SS's home, he remained in the truck while Mr. Santos went to talk to SS alone. Mr. Piercy did not know what Mr. Santos and SS discussed.

44. Mr. Peddle testified that he attended at the home of SS and spoke to him about joining the union. Mr. Peddle indicated that initiation fees might have been discussed but he could not recall.

SC

45. SC testified that he received a telephone call from an individual who identified himself as a union official. Amongst other items that were discussed, SC testified that the union organizer told him that "they had a majority; I could sign now for $50.00 or be an idiot and pay $700.00 when it was all over." SC testified that he was told that the "union is taking over" or the union is "getting in." SC testified that he was told "if I did not sign before the union got in it would be $700.00 if I wanted in after in order to stay at Graham Bros. I would not be employed anymore if I did not pay." SC testified that he later received a second call from a union organizer. SC further testified that he was not told that he could

sign now and pay $50.00 or, if he did not sign he would still be able to join for $50.00 if the union got in. SC did not sign a card.

46. During cross-examination SC was asked if he would agree that there was no discussion with the union organizer to the effect that if he did not sign he could not work for Graham Bros. SC responded that he did not agree. SC testified that the union organizer implied that if he did not pay the higher rate he would not be able to work. SC testified "I assumed if I did not pay the $700.00 I would not be working because he said I could pay $50.00 now or I would have to pay $700.00 later." SC was told that it would be the union's evidence that it was Mr. Santos who called SC the first time and that there had been no discussion concerning an initiation fee. SC did not agree that there had been no discussion concerning an initiation fee. It was further put to the witness that the second call was placed by Mr. Peddle and that during this call Mr. Peddle explained to the witness that the reduced initiation fee was available to anyone working before or after the union got in. Again, the witness disagreed and stated that the union did not tell him that the reduced fee would apply after the union got in. SC testified that he discussed the telephone call with MR.

47. SC testified that he was called into a meeting at the Graham Bros. offices in the spring of 2009. He thinks there were a few other employees at the meeting along with Mr. Richardson and Mr. Bell. He believes that he was told that the meeting had to do with the union and how they were harassing people. SC assumed that it was MR who had told the Employer that he had been contacted by the union. SC testified that he believes he raised the discussion about the initiation fee on his own. He does not believe that he was asked if he signed a card and does not believe he told them whether he signed a card. SC testified that others present at the meeting were asked about their interaction with the union and each of the employees present heard the other employees' answers. SC testified that no one at the meeting disclosed whether they had signed a card.

48. As indicated above, SC testified during the course of cross-examination that he, and not Mr. Richardson or Mr. Bell, was the first to raise the two-tiered initiation fee issue. SC's response was not challenged and it was not put to him that the idea of the two-tier initiation fee issue originated during his meeting with Messrs. Bell and Richardson and not, as SC testified, as a result of his discussion with Mr. Santos.

49. Mr. Peddle testified that he placed the second call to SC. He could not recall if initiation fees were discussed or not.

JH

50. JH testified that he was annoyed as union organizers kept calling him on his pay as you go cell phone to try and get him to sign a card. One night they showed up at his house. He said the first time two guys showed up at his house at night and asked him to sign a card. He testified that, at this meeting, he was told if he signed then it was $50.00. If he waited it would be a lot more. JH testified that the next day or days later two union organizers showed up at his house. He invited them to sit and talk to him. JH testified that, at this meeting, he was told that his co-workers had already signed "only you and a few other guys left to sign." The organizers told him that if "if I sign right at that moment it was $50.00 if I did not sign then it would cost me more and they were already in anyways." JH testified that he thought if he did not sign and Graham Bros. was going to be union, he might not be hired back in the spring. JH testified that he was never told that, if the union got certified, he could still join for $50.00. JH recalled the amount he would have to pay later as being $500.00. JH signed a card.

51. During cross-examination JH recalled that the two men who came to his house introduced themselves as union representatives. One said he was from the Operating Engineers and the other from

the Labourers. He said he could not recall their faces. He couldn't recall if the same two organizers came both times or if it was different people. It was put to JH that only Mr. Santos attended at his home the first time and that Messrs. Taddei and Peddle attended at his house the second time. This did not assist JH to recall the meetings.

52. Under cross-examination, JH testified that he was sure the organizers said Graham Bros. was already union and that he could pay $50.00 now or pay more later. JH testified he recalls the amounts being "from one extreme to the other." JH agreed that the union organizers never said to him that he would not be able to work for Graham Bros. if he did not sign but he was left with that impression. When JH was told that the union's evidence would be that there was some discussion about a reduced initiation fee JH responded "is that when you are signing right on the spot?" He was asked if he recalled being told that the normal fee was $850.00 for the operating engineers and $500.00 for the labourers and he responded "ya, but if I signed right on the spot it would be $50.00." When union counsel put to JH that he was never told that if he signed later he would have to pay more, JH responded "they said $50.00 now if you sign later down the road $500.00 so I signed right then." When it was put to JH that he was told the reduced initiation fee was for all Graham Bros. employees JH responded that he was sure that they did not say that.

53. JH testified during cross-examination that he told a co-worker he signed a card. He testified he did not complain to anyone that he was forced to sign a card. JH responded he was "pressured" into signing a card by being told the union was in and if he did not sign then he would have to pay $500.00.

54. JH testified that in the spring of 2009 he was told to go to a meeting at the Graham Bros. office. He recalls the reason he was there was because he signed a card and Graham Bros. knew he signed a card. JH remembered there being maybe six other employees present at the meeting. Parenthetically, two of the employees JH recalled being at the meeting with him testified that when they attended a meeting at the Graham Bros. office they met with Messrs. Richardson and Bell alone. JH testified that someone at the meeting said to him "we know you signed a card." Then later he recollected it differently and said that others at the meeting said to him that they did not sign a card and he admitted that he had signed. He denied that anyone present at the meeting put to him that he signed because he was told if he signed then it was $50.00 but it would be more if he signed later. JH testified that he told them about his two meetings with the union organizers and what had been said at each meeting. When it was put to JH that he made up an excuse for signing a card so he would not look bad JH responded "I was tricked into signing a card. That is not an excuse that is a fact. I got tricked. They lied when they said the union was already in. Come spring the union was not in. I got tricked."

55. Mr. Peddle testified that he and Mr. Taddei met with JH. Mr. Peddle could not recall if the question of initiation fees came up during his discussions with JH but testified that, if they did, he would have said that the cheaper rate applied no matter what. He testified that he did not tell JH that the union had enough cards to be certified; it would cost him more to join later; or that if he did not sign he could lose his job.

56. Mr. Taddei testified that JH asked about initiation fees and was told that the $50.00 fee was available to all Graham Bros. employees regardless of whether they signed so long as the union was successful. He testified that he did not tell JH that the union had enough cards to be certified; it would cost him more to join later; or that if he did not sign he could lose his job

III. Union's submissions

57. The union argues that the testimony given by the employees is not credible and accordingly the Board ought to find that Graham Bros. has not met the onus to establish on a balance of probabilities

that the alleged statements were made. The union advances the following assertions in support of its argument that the employees are not to be believed:

- The allegations only came to light after the Employer held closed door meetings with the employees.
- Some of the employees could not recall if they raised the issue of the two-tiered initiation fee first or whether it was raised by the Employer.
- No similar allegations have been raised after the date the application was filed to the date of the Board's hearings years later.
- The allegations are confined to a group of employees that met with Mr. Richardson and Mr. Bell.
- Some employees testified that they told management about the statements that underlie the instant application shortly after they were made. Graham Bros. argued in an earlier stage of this matter that it was unaware of the allegations until June 2009.
- The employees themselves did not complain and some testified that they would not have complained.
- Employee witnesses had poor recall on other details but had good recall of the alleged statements that underlie this application.

58. With respect to specific employees, the union asserts as follows:

- CC was not credible as she said she did not talk to her dad and fiancé about her interaction with Mr. Santos on their way home from work.
- RZ testified that he signed because he was worried if he didn't he wouldn't have a job yet he later asked for his card back. If he was worried that if he didn't sign he wouldn't have a job he would not have asked for his card back.
- RZ and JH were put in a position by the Employer of having to come up with an excuse for having signed a card.

59. In the alternative, to the extent that the Board finds that Mr. Santos made the statements alleged, the union argues that there were follow up meetings with another organizer who clarified the manner in which the two-tier initiation fee structure works. As such, the union argues that it is immaterial what Mr. Santos may or may not have said in those cases.

60. Finally, the union argues that, if the Board finds that some or all of the allegations are true, the Board ought not to dismiss the application nor order a vote. The union submits that the appropriate response would be for the Board to discount the cards of two employees who signed a card (which would reduce the union's membership support by one as the second individual was not at work on the date of application).

IV. Analysis and Decision

61. The fact that the allegations in issue in this case came to light as a result of employee meetings with a member of Graham Bros.' senior management has caused me to consider the evidence with extreme care. It is a trite proposition that employees, because of their position of economic dependence on their employer, generally want to be perceived by their employer as being aligned with their employer's views on unionization. Employees who are asked by their employer to indicate their position on unionization are, due to a fear of repercussions or a desire to curry favour with their employer, vulnerable to employer influences. It is plausible that an employee who has signed a union card will, upon being confronted by his or her employer, deny having signed a card or create a pretext for having done so.

Employees wishing to curry favour with their employer may be easily influenced to adopt an employer's suggestion that the employee was the subject of some improper behaviour at the hands of a union organizer. One has to be cautious about the authenticity of evidence that relates to allegations that were uncovered at a meeting between the employee and the employer.

62. For the reasons that follow, and having factored in the concerns noted immediately above, it is my determination that it has been established on a balance of probabilities that Mr. Santos made the statements alleged to each of CC, SC, SS, RZ and JH.

63. I found each of CC, SC, SS RZ and JH to be credible. Each one testified in a forthright manner. None of them attempted to evade questions. Their evidence was internally consistent as well as consistent with that given by other employees with some minor exceptions that are to be expected. They did not waver under cross-examination.

64. The employees were consistent with one another in tangential areas. For example, a number of the employees, when challenged in cross-examination as to whether an organizer made the comments alleged, responded by saying that confusion over the initiation fee issue was the source of discussion amongst many of the employees on the job site. When a witness is coached, they often are well versed in their testimony as it relates to the allegations in issue but offer little detail or have no knowledge or recall, about tangential events. These witnesses volunteered such information and, although each used their own words, gave consistent testimony.

65. The employees did not all relate the same story nor use the same words to describe their discussions with Mr. Santos. They each phrased what they were told differently and it was apparent from their testimony that each of them had their own misconception as to how a trade union gets certified. Some witnesses thought it was possible that the union was already in; some thought that there was a process yet to take place but had differing ideas as to what that process entailed. None of them had a perfect understanding of the process that had been unfolding around the application filing date. Had the Employer been the source of the allegation, one would have expected the employees to share a fairly common story and use similar language to tell their story. That did not occur.

66. It is further noteworthy that none of the employee witnesses wavered during cross-examination. Not one witness, upon being told what the union's evidence would be, hesitated at all. If anything, they generally became irritated or annoyed at the suggestion they were not testifying truthfully.

67. Having regard to the evidence heard, I do not take up the union's contention that the Employer suggested the allegations to the employees. Each of the employees was asked during the course of cross-examination what they understood the purpose of their meeting with management to be. Each gave a somewhat similar but different answer. To paraphrase, the responses were generally that management wanted to know how the union had tried to get the individual to sign a card. With the exception of SC who testified that he raised the two-tier initiation fee issue first, the employees were not asked who raised the initiation fee issue. Thus, it cannot be said, as the union has argued, that some of the employees were unsure about who raised the issued first (this is the case even when the evidence of the remaining four employees is considered). Further, the union's theory, that the employees adopted a proposition put to them by management, was not put to any of the employees.

68. Second, as I have set out above, the employees did not all tell the same story. The employees used differing words to tell what happened. Their thoughts as to the significance of what they were told varied depending upon their own misconception as to whether the union was on the verge of getting in or whether there was a process yet to be played out. They had varying degrees of annoyance with the

union's approach ranging from CC who was more annoyed with Mr. Santos having hung around bothering her for 30 minutes to JH who felt he had been tricked into signing a card.

69. Third, most if not all of the employees who testified had another complaint about how they had been approached by the union that they did not see as any less important than the allegation concerning the two-tier initiation fee issue. JH was upset that the union kept calling his pay as you go phone. CC was irritated by the fact that Mr. Santos would not move on when she asked him to do so. RZ was frustrated that he had been told he could get his card back and then could not get in touch with Mr. Santos. The employees testified that they discussed these complaints with other employees and explained how this information may have gotten to Graham Bros. management. This evidence suggests that these employees were asked to meet with the employer, not because the employer identified them as employees it could influence, but because they might have had information that would assist the employer in its investigation. From the evidence given by the employees, it is apparent that Graham Bros. met with more employees than testified in the proceedings before me. Thus, it cannot be said that each employee that met with management came away with the same story to tell.

70. The union asked each employee if they complained about the alleged statements. Each employee said they did not. As I indicated in my decision in this matter dated June 22, 2011 "unlike the situation where an employee is threatened with physical harm, an employee subject to the allegations in issue herein may not have believed that he or she had the basis upon which to make a complaint to the Board." RZ's testimony to the effect that "to me it sounded reasonable, a price for signing a penalty for not" certainly suggests that, although he heard the words and understood their implication, he did not think they were something that he was in a position to complain about. The fact that it was the Employer, as opposed to the employees, that picked up on the fact that statements may have been made by union organizers that could place the reliability of the membership evidence in doubt, does not diminish the significance of the allegations or mean that they did not occur. I dealt with the employer's entitlement to raise the allegations in an earlier decision dated January 14, 2011.

71. The union suggests that the evidence of a few of the employees to the effect that they told Graham Bros. management about the alleged statements very shortly after they were made is inconsistent with the Employer's position taken in an earlier stage of this proceeding that it did not find out about the allegations until June 2009. The union argues that this inconsistency undermines the credibility of the evidence. In an earlier phase of this case, the union sought to have the application dismissed for delay. The union argued that the Employer knew of the allegations in December 2008 but did not raise them with the Board until June 2009. The Employer asserted that it did not learn of the allegations until the investigation was conducted in June 2009. Notwithstanding my suggestion to the parties that *viva voce* evidence would be required in order for me to determine the issue (see my decision of November 25, 2010 at paragraph 14) the parties called no such evidence nor objected to the failure of the other party to do so. Accordingly, I determined the matter based solely on the submissions filed. I found, based on the submissions filed, that the Employer found out about the allegations in June 2009 and dismissed the delay motion. I do not see how the fact that the evidence given by the employees in this phase of the proceeding is inconsistent with the submissions filed by the Employer in an earlier phase of the proceeding undermines the credibility of the employees. In fact, given that this evidence contradicts the Employer's position and submissions made in an earlier phase of this case, it supports a finding that the employees were not coached by the Employer as to what they were to say in this phase of the proceeding.

72. For the reasons set out above, I find each of the employee witnesses to be credible.

73. I further find the evidence given by each of CC, SS, RZ, JH and SC to be plausible. I have not set out the evidence relating to the allegations that have been made by the remaining employees involving the other four union organizers. That evidence, however, establishes that the norm for the union

organizers was to approach employees in pairs. It was the exception for a single union organizer to talk to an employee alone. Thus, it is noteworthy that, in the cases before me, Mr. Santos was always alone when he spoke to the employees. He was never accompanied by another union organizer. In fact, in the case of SS, Mr. Piercy, who was specifically recruited by the union and assigned to the Graham Bros. organizing campaign because he was from Newfoundland, was told to stay in the truck while Mr. Santos went to talk to SS, an employee from Newfoundland, alone. Mr. Santos' conduct of speaking with employees alone, with no witness to the conversation, certainly renders the employees' allegations plausible.

74. In addition, I note that Graham Bros. had external counsel present at each of the employee meetings. The only other meeting the employees testified they attended was a meeting with legal counsel held in order to prepare for the actual hearing. All legal counsel are members of the Law Society of Upper Canada and required to adhere to the Law Society's Rules of Professional Conduct. As such, I find it improbable that employees were counselled to give false testimony at these meetings.

75. For the foregoing reasons, I find as a fact that CC, SS, SC, RZ and JH were told by Mr. Santos the union had enough support to get in; they could sign a card and join the union now for $50.00; if they did not, when the union got in, they would have to pay a significantly larger amount in order to keep working for Graham Bros. Given that Mr. Santos spoke to each of the individuals alone and did not testify, there is no evidence to contradict that given by these five employees.

76. The union suggested that, if I found the employees with whom Mr. Santos spoke to be credible and the alleged comments to have been made, the confusion created by Mr. Santos' comments was cleared up by the union organizer who later spoke to the employee. Mr. Peddle subsequently spoke to SS and SC. Mr. Peddle and Mr. Taddei subsequently spoke to JH. Mr. Peddle could not recall if he discussed initiation fees with any of SS, SC or JH. Mr. Taddei recalled discussing initiation fees with JH and advising him that the lower initiation fee was available to all Graham Bros. employees if the union was certified.

77. The Declaration Verifying Membership Evidence in this matter is signed by Mr. Santos. Based on the employee list as it currently stands, the union has 63 cards. From my review, it appears that sixteen of those cards (25.4 %) are witnessed by Mr. Santos. This does not include cards that were filed by the union but do not count (one of the cards that was filed but does not count was signed by RZ). One of the sixteen cards that count is signed by JH. Although the Board has not finalized the employee list, the Board has found that there was a maximum of 114 employees of Graham Bros. in the bargaining unit on the date of application. The union has challenged 50 of those names.

78. The remaining issue is whether the fact that Mr. Santos made statements to five employees to the effect that they could join the union now for $50.00 or when the union got in would have to pay significantly more to keep their jobs, casts doubt on the reliability of the membership evidence and, if so, whether the Board should direct a representation vote. For the reasons that follow, I have determined that doubt has been cast on the reliability of the membership evidence and direct that a representation vote be held.

79. The state of the jurisprudence at the time of this case holds that a union cannot lead employees to believe that if they sign a card they can pay a reduced initiation fee but, if they do not sign a card and the union gets in, they will have to pay a higher fee. The Board has ruled that in such a case, the Board is unable to determine if the employees signed an application for membership card because they wanted to join the union or because they wanted to avoid a higher financial payment down the road. A cloud is cast over the reliability of the membership evidence.

80. The union asked the Board to consider the fact that, of the nine employees who testified, only three signed a card. I have made a finding with respect to only five of the employees and thus the union's submission could be rephrased as asking the Board to consider that only one of the four employees that Mr. Santos spoke to signed a card (I have not included JH as he signed a card after speaking with Messrs. Peddle and Taddei and there is some evidence that Mr. Peddle clarified the initiation fee issue for JH before he signed). I take the union to be suggesting that the statement does not have the impact on employees that the Board has attributed to it in its jurisprudence and the Board ought not to find that the making of the statement casts a cloud over the membership evidence.

81. The Board's jurisprudence is replete with comments to the effect that the Board will not monitor the manner in which union organizers choose to approach employees. However, where a union organizer tells an employee that if they sign a card they can join the union for $50.00 but if they don't and the union is subsequently certified they will have to pay $500.00 or more to keep their job, it becomes questionable as to whether the employee wanted to join the union or whether the employee joined the union to avoid the potential of having to pay a significantly higher amount later. It is a reasonable inference that some employees would sign in order to avoid having to pay significantly more later. In the face of that reasonable inference, it is impossible for the Board to fully trust the membership evidence. While the fact that only one of the four employees signed a card may suggest that employees are not overwhelmingly influenced to sign a card by the prospect of having to pay more later, it may equally suggest that 25% of the employees faced by the prospect were influenced to sign a card.

82. The union argues that the Board ought to discount only those membership cards that the Board finds to have been signed after the statement was made. Having regard to my findings above, this would result in none of the cards being discounted (the card signed by RZ that was filed by the union does not count as he was not at work on the date of application and the card signed by JH was signed when he was with Mr. Peddle who may have clarified the initiation fee issue for him).

83. The Board does not accept the union's approach for a number of reasons. The Board has found that Mr. Santos made the alleged statement to five employees. Mr. Santos was the collector of 16 of the 63 membership cards relied upon by the union in support of its application. As with JH, it is possible that Mr. Santos made the statement to other employees who signed a card that was witnessed by another union organizer. Further, SS, RZ and two of the other employees who testified, gave evidence that the two-tier initiation fee issue was a topic of conversation on the job site and a whole bunch of people were talking about it. Thus, it is a fair inference that the statements were not restricted to CC, SC, SS, RZ and JH. The Board does not accept, as argued by the union, that the fact that no other employees have come forward means that the statements were not made to anyone else.

84. Also, the approach urged by the union of only discounting the cards signed by individuals to whom the statement was made leads to a very unfortunate labour relations result as is evident from the instant proceeding. In the instant proceeding, individuals were served with a summons to witness and required to testify about what was said to them by the union organizer and whether what was said to them led to their signing a card. The confidentiality of membership evidence is extremely important and should be protected except in the most extreme situations. The employees who testified in this proceeding will never again believe that the signing of a membership card is confidential. Such a consequence is not to be sanctioned. Second, I consider whether or not an individual signed a card to be of marginal, if any, relevance. The Board assesses the impact of such statements objectively, asking itself whether the statement would likely influence a reasonable employee of average intelligence and fortitude. Just as where an employer threatens an employee with repercussions for signing a card, the Board does not ask whether the statement influenced the employee in question.

85. Accordingly I am unable to determine the extent to which the employees of Graham Bros. were aware of the statements made by Mr. Santos but infer from the evidence heard that the statements were known to more employees than the five who testified in this proceeding. I know that Mr. Santos is the collector of at least 25% of the membership evidence and that he made the statement to employees whose application for membership card he did not witness. In the circumstances the reliability of the membership evidence is in doubt to such an extent that I find it appropriate to order the taking of a representation vote. If the union was unsuccessful with each of its challenges to the employee list, based on the number of cards filed, it would have at least 40% support.

86. This matter is hereby referred to the Manager of Field Services to consult with the parties with a view to making vote arrangements.

87. The attached Notice to Employees (Appendix "A") and Voters List (Appendix "B") are to be posted in the workplace in locations where they might reasonably be expected to come to the attention of the employees and are to remain posted until the representation vote is held.

2499-11-HS Elementary Teachers' Federation of Ontario, Applicant v. **Kawartha Pine Ridge District School Board** and Hugh McGuire, Inspector, Responding Parties.

Health and Safety – *Occupational Health and Safety Act* – The inspector ordered the School Board to re-inspect a particular school to verify the accuracy of the existing asbestos survey – ETFO appealed the order seeking broader relief relating to all schools in the School Board – The Board followed the jurisprudence which makes it relatively clear that an appeal under s. 61 is not in the nature of an enquiry where all issues are at large, rather the appeal is of a decision or non-decision by the Ministry of Labour – Accordingly the Board found the appeal was restricted to the particular school and the wide relief sought by ETFO for all schools was beyond the jurisdiction of the Board in this appeal – Matter continues

BEFORE: *Bernard Fishbein*, Chair. [2012] OLRB REP. MAY/JUNE 489

APPEARANCES: *Mandy Wojcik, Valence Young* and *Dave Wing* appearing for the Elementary Teachers' Federation of Ontario; *Nadine Zacks, Marianne Henderen, Jeff Berry, Larry Piccinin* and *Mark Galonski* appearing for Kawartha Pine Ridge District School Board; *Brian Fukuzawa, Linda Patchell Loralee Idler* and *Hugh MaGuire* for the Ministry of Labour; *Blain Morin* appearing for CUPE.

DECISION OF THE BOARD: June 8, 2012

1. This is an appeal of an Inspector's Order pursuant to section 61(1) of the *Occupational Health and Safety Act*, R.S.O. 1990, c. O.1, as amended (the "Act"). It is brought by the Elementary Teachers' Federation of Ontario ("ETFO") with respect to an order made by the Occupational Health and Safety Inspector ("the Inspector") on or about September 27, 2011 following a site visit by the inspector to Keith Wightman Public School ("Wightman") a school operated by the Kawartha Pine Ridge District School Board ("the School Board"). The Order was relatively simple:

> "Several "new" discoveries of asbestos containing material have been made in recent days at this school. The Employer shall cause a re-inspection of the premises known as Keith Wightman Public School to verify the accuracy of the existing asbestos survey."

2. ETFO asserts that the Order is inadequate and appeals alleging "systemic" failures by the School Board and seeking much broader relief:

> (a) a reassessment of the asbestos management program at **all schools in the Board by a third party**, with asbestos abatement and remediation as required;
>
> (b) the development and implementation of a training program to inform workers about the location of asbestos in their workplace, risk of asbestos, hazards and precautions necessary in their own workplaces;
>
> (c) a **complete list of all Board schools** that are known or are suspected to have asbestos containing vermiculite in masonry walls or elsewhere (with floor plans that clearly identify the affected walls);
>
> (d) the development and implementation of a **Board wide** monthly inspection and remediation program to address the ongoing risks of vermiculite spillage;
>
> (e) the provision of a Workplace Safety and Insurance Board Incident Exposure Form to any teacher or staff member who may have been exposed to vermiculite on Board property.
>
> (emphasis added)

3. The School Board and the Ministry of Labour ("MOL") opposed the appeal.

Background

4. Asbestos poses a health and safety concern when fibres are present in the air that people can breathe. Asbestos fibres that are enclosed or tightly bound in a product pose no known significant health risks. As a result, *inter alia*, there is a specific regulation under the Act dealing with asbestos, O. Reg 278/05, Designated Substance – Asbestos on Construction Projects and in Buildings and Repair Operations ("the Regulation"). In particular Section 8 of the Regulation deals with the ongoing asbestos management in buildings and Section 10 of the Regulation deals with Owner's Responsibility before tender or arranging work.

5. Vermiculite is a mica-like mineral used in a variety of commercial and consumer products because it is fire resistant and has good insulation qualities. Vermiculite itself is not asbestos but some vermiculite insulation contains asbestos fibres and accordingly may pose health and safety concerns if inhaled.

6. Apparently although unknown to the School Board prior to March 2011, vermiculite may have been used in the construction of some school buildings. Vermiculite would be most commonly found in the exterior walls of buildings. However, where buildings have undergone renovations such that exterior walls have become interior walls, or where walls are an exterior wall on a higher level of the school but an internal wall on a lower level, vermiculite may be contained within those interior walls. Although the Regulation deals with asbestos containing material ("ACM"), the School Board has treated all vermiculite found within its buildings as ACM.

7. In March 2011, the School Board's newly hired environmental consultant, Pinchin Environmental ("Pinchin") completed and reported to the School Board on an asbestos survey at Wightman. It identified the presence of vermiculite above the ceiling tiles and on the hot water heating

radiators in rooms 114 and 114B in the "North Wing" of Wightman. As well in the winter of 2010 to 2011 an external faucet on the outside of Wightman was broken as a result of a snow plow running into it. The pipe connected to the faucet ran through the wall and came out inside the gym equipment room of Wightman. In May, 2011, a contractor was hired to remove the asbestos–containing pipe insulation around the broken faucet so that the pipe could be repaired. When the asbestos insulation was removed and the pipe removed from the wall, vermiculite spilled out. The School Board did not update its asbestos records with respect to these incidents.

8. As well, consistent with renovations to other classrooms at Wightman (Rooms 109 and 110), the School Board decided to remove asbestos–containing pipe insulation on two pipe elbows. This was to be done after school on June 14, 2011. Apparently two teachers discovered the workers removing this pipe insulation. They had not been previously notified of this work. There were no warning signs or protective materials with respect to their work areas and materials. Not surprisingly, the teachers were concerned and filed reports with the principal of Wightman and contacted ETFO.

9. There was a meeting between ETFO and the School Board on June 23, 2011 at which time ETFO indicated that it would be contacting the MOL. As a result there was an inspection at Wightman on June 29, 2011. The School Board's asbestos records under the Act had not been updated to include any of these incidents at Wightman. As a result the Inspector then made several Orders:

> (a) A representative of the owner reported that a survey conducted in or about March 2011 determined that asbestos was present in vermiculite insulation found in some cinder block walls located in this building. As of June 29, 2011 the representative of the owner reported that the record described in clause 3(a) has not been updated to reflect this information. The representative also reported that none of the records described in clause 3(a) and pertaining to any of the buildings owned by the owner had been updated, although some surveys had been done.
>
> The owner shall update the record described in clause 3(a), (b) whenever the owner becomes aware of new information relating to the matters the record deals with. O. Reg. 278/05, s. 8(5).
>
> (b) A representative of the owner reported that the owner was aware of the presence of some material described in O. Reg. 278/05 clauses 2(a), (b), (c), (d) and (e) and did not include the information in the record as required. The owner shall ensure the information is included in the record.
>
> (c) While repairing the hose bib on the exterior wall of the gym equipment room, workers were not advised that they were working in proximity to asbestos –containing material and were likely to disturb it. The employer was aware of the presence of this material.
>
> (d) The employer shall provide workers with the following information:
>
> (1) the location of all material described in clause 1(a);
> (2) for each location of materials friable or non-friable;
> (3) in the case of sprayed on friable material, for each location

> a. if the material known to be asbestos-containing material; the type of asbestos, if known, or
>
> b. in any other case, a statement that the material will be treated as though it contained a type of asbestos other than chrysotile".

10. There is no doubt that ETFO and its representatives were not satisfied with the manner in which the School Board was dealing with asbestos problems either at Wightman or other School Board properties. In any event this is not the order that triggered this appeal. This order was not appealed. Following the issuing of these orders the School Board presented ETFO with a revised report; however ETFO contends that the School Board did not explain why the deficiencies existed in the first place.

11. As well in August 2011, the School Board was extensively renovating another of its schools, Hillcrest Public School ("Hillcrest").

12. There was a site tour at Hillcrest (not Wightman) involving ETFO when the construction supervisor indicated vermiculite exposure had occurred during the removal of ceiling tiles in a number of classrooms and during the replacement of an electrical wiring bib on the exterior wall of the electrical room. Apparently the MOL had issued orders against the contractor of that construction project. ETFO was concerned that, like the situation at Wightman, the School Board's asbestos records were not complete in disclosing the situation at Hillcrest.

13. ETFO was becoming increasingly concerned as it was discovering (apparently from the Board itself) that other School Board properties were being identified as containing vermiculite insulation.

14. There was another meeting on or about September 22, 2011 at Wightman with MOL and representatives from ETFO and the Canadian Union of Public Employees ("CUPE") which represents non-teaching staff at the School Board (including Wightman) to discuss whether the previously issued MOL orders in June had been complied with. The Field Visit Report of the Inspector makes it clear that ETFO and CUPE objected to the adequacy of the School Board's response, including a lengthy written report from ETFO. Notwithstanding CUPE and ETFO's objection (including its reports), the Inspector found the orders deemed to be complied with. Again, no appeal was taken from that determination of the Inspector.

15. Immediately following that visit, representatives from ETFO, the School Board and Pinchin conducted a further inspection of Wightman. Again, some vermiculite was found. As a result the inspector returned to Wightman on the following day (apparently at the initiation of ETFO). Since the room in question had now been locked from the hallway; there were now signs indicating no one was to enter the room; a staff meeting had occurred to inform the staff of the situation and caution them not to enter the room; and as further inspection was imminent and the cleanup was scheduled, no orders were issued by the Inspector. Again, no one appealed the Inspector's decision.

16. However ETFO again contacted the MOL because of yet further discoveries of vermiculite and as a result the Inspector returned on September 26, 2011. Since the area had been inspected and remedial action was done together with another report by Pinchin, the Inspector again did not issue any orders. Once again no appeal was taken by anyone with respect to that decision of the Inspector.

17. The Inspector once again attended Wightman on September 27 (apparently again at the behest of ETFO). As the Inspector's report indicates, these repeated "apparently new" discoveries of vermiculite

called into question the previous inspections and reports. The School Board was prepared to place off limits or close the north upper wing and some lower levels of Wightman which were not to be used until remedial action had been taken. Therefore, in the circumstances, the Inspector issued the order that is the subject of this appeal (referred to in paragraph 1), which ETFO appeals (seeking the broad relief outlined in paragraph 2).

Preliminary Objection

18. In these circumstances the MOL makes a preliminary objection to both the scope of ETFO's appeal and the relief it seeks. The School Board joins the MOL in this preliminary objection. In their view this preliminary objection should be determined first otherwise the parameters of the evidence and the appeal would be, at a minimum, unclear, if not, at worst, limitless. ETFO argued we should hear evidence first.

(a) The Positions of the Parties

(i) The Ministry of Labour (MOL)

19. The MOL argues that for a section 61 appeal to be properly triggered under the Act, three things must occur:

> (1) The issue has to be brought to the attention of (or "put to") the inspector;
> (2) The inspector assesses the issue – either deciding or refusing to issue an order; and
> (3) The appeal must be launched in the 30 day appeal period stipulated in the Act.

20. Here, the MOL contends, the Order and the narrative make clear that only Wightman was at issue. None of the broader relief (schools other than Wightman) was ever put to the Inspector. For there to be a refusal to issue an order by the inspector which can be appealed (in the view of the MOL), requires the Inspector to actually turn his/her mind to the issue, as would be the case where the inspector actually issues an order. The issue of the other schools was not put to the Inspector and therefore the Inspector could not have turned his mind to the other schools. Moreover, the MOL contends, for the strict 30 day time limit provided by the Act to be enforceable, or effective, this must be so – the time limit must run from a specific incident not a series of incidents. If there were other concerns about what the Inspector did or failed to do before the order of September 27, 2011, the time limit to appeal those issues has now expired. The MOL points me to the prior decision in *Ottawa Carleton Detention Centre*; [1999] O.O.H.S.A.D. No. 290 para. 19, *Kitchener Fire Department*; [2007] O.O.H.S.A.D. No. 81 para. 8, *CAW Local 222*; [1996] O.O.H.S.A.D. No. 15 para. 26. Bottom line, the MOL asserts that it is not enough to raise general concerns before the Board (or inspectors) – here the remedies sought by ETFO are beyond the jurisdiction of the Board. Only the issues at Wightman were put to the inspector, the Inspector only turned his mind to Wightman and accordingly only Wightman can be the subject of possible remedies in this appeal. Otherwise there will be no clear, concise, precise and efficient adjudication of issues in dispute and this appeal clearly demonstrates that justifiable concern.

21. Equally the MOL argues that any reasonable interpretation of the Regulation supports the limited scope of the appeal. In particular section 10 of the Regulation which directs what the owner is required to do about ACM addresses where the material has "fallen" or it is readily apparent that the material "will continue to fall" so the obligation does not extend to other locations unrelated to where the

material has fallen. It is not the potential of the material falling that the regulation addresses – and that is what ETFO's appeal really seeks to address: the potential of falling ACM at other schools.

(ii) The School Board

22. The School Board adopts and agrees with the submissions of the MOL. Section 61 is not a wide open inquiry into all health and safety issues in the workplace – its scope is limited to what is brought to the attention of the inspector. The School Board refers me to *National Automobile, Aerospace and Agricultural Implement Workers of Canada (CAW-Canada) Local 444* [1996] O.O.H.S.A.D. No. 36 at para 6; *Re Walker* [1995] O.O.H.S.A.D. 54 at para. 9 and *Xstrata Canada Corporation* 2010 CanLII 19701 (OLRB) at paras 14, 16 and 17.

(iii) ETFO

23. Not surprisingly, ETFO takes a different tack. ETFO asserts that there is a factual dispute between the parties that requires evidence before the preliminary motion of the MOL (and the School Board) can be determined. ETFO asserts that contrary to the assertions of the MOL, it did put to the inspector and the MOL the question of the other schools besides Wightman. In ETFO's submissions it was the MOL which "shut it down" when it raised the issue of the other schools. ETFO points us to earlier memos it prepared, and in particular, a memo dated August 31, 2011 that it prepared and forwarded to the Inspector that raised its concerns about the other schools. That memo was sent in preparation for the meeting on September 22, 2011 where ETFO and CUPE unsuccessfully asserted that the July 14th order issued by the Inspector had not been complied with.

24. In ETFO's submission, it was without recourse other than a Section 61 appeal when the Ministry was refusing to listen to its concerns about the other schools. In ETFO's submission the problem was a bigger problem than just at Wightman – it was a systemic failure and the Ministry did not want to hear about anything other than Wightman. In ETFO's submission the order appealed from is just the last point in a continuing saga and the Board should not ignore that.

25. As well ETFO argued the Regulation ought not to be interpreted in the absence or without the context of evidence. In particular, ETFO contended that the ACM (in particular Room 114B) was continuing to fall and pointed to various documents to substantiate that assertion. In ETFO's view, the Act (and the Regulation) is protective legislation with a remedial purpose and it ought to be generously interpreted to allow this appeal to go forward.

Analysis and decision

26. Ultimately I concur with the analysis put forward by the MOL and the School Board. ETFO's appeal in these circumstances is over reaching and overly broad in what it seeks to do.

27. It may or may not be that ETFO's concern that there are some systemic problems with the School Board is in fact correct. However, that is not the jurisdiction of the Board under section 61 of the Act. The jurisprudence makes that relatively clear.

28. As stated in *Re Walker*, supra, at paragraph 6:

> **An appeal under section 61 is not in the nature of an enquiry where all issues are at large. It is clearly an appeal of a decision or a non decision by the Ministry of Labour.** The Ministry is required to investigate the health and safety concerns of the workplace parties. It is

> the Ministry of Labour at the investigative stage that is able to conduct a free ranging enquiry and decide whether and what violations have occurred. It is those decisions that are subject to appeal.
>
> [emphasis added]

29. To the same effect are the comments of the Board in *Re CAW Canada, supra*, at paragraph 6:

> My role is to sit in review of circumstances or issues that were brought to the attention of an inspector at a certain point in time, about which inspector either wrote or did not write orders. My job is to look at the same issues and circumstances that were brought to the attention of the inspector, and decide if the inspector made the right decision..... My role is limited to looking at what was brought to the attention of the inspector. **My role is further limited by the parameters of the Act. I do not have the jurisdiction to correct any and all issues that the Union considers to be health and safety problems.**
>
> [emphasis added]

30. See also *Ottawa Carleton Detention Center, supra,* where the Board stated at paragraph 19:

> At its most basic, the Act is about establishing safe workplace practices. It places obligations on persons and entities who can have an impact on workplace safety, including workers, joint health and safety committees, employers, contractors. The role of the inspector, at its most basic, is to make determinations about whether those persons and entities are meeting their obligations, and if they are not, to encourage or require compliance. Inspectors have a range of options (some mandatory and some discretionary) to achieve those goals. **The scheme of the Act is not concerned with "policing" the actions or non-actions of the inspectors and the Ministry.** While the conduct of the inspector will often be an issue in an appeal under section 61, the inspector is relevant only to the extent necessary to illuminate the adjudication of the workplace dispute. For example, parties can bring appeals only with respect to issues brought only to the attention of the inspector. Parties can appeal only orders made (or failed to be made) by an inspector; they cannot appeal advice or counsel provided by an inspector.
>
> [emphasis added]

31. Equally the Board stated at paragraph 8 of the *Kitchener Fire Department, supra*:

> These decisions, as well as the decision of the Board in *Tembec Industries Inc.(Timmins Sawmill)* [2005] O.O.H.S.A.D. No. 156 thus establish that not all emanations from an inspector fall within the scope of what can be subject to an appeal, and suspension, under section 61 of the Act. Whatever form these emanations take, the essential ingredient is either the assessment of violation of the Act or a refusal to conclude there has been such violation. In circumstances where the inspector had not made any assessment that there had been a violation of the Act, an application cannot seek, through an appeal, another sort of "refusal of an order" with a different reason.

32. See also *Canadian Auto Workers, supra,* at paragraph 46:

> In its grounds for appeal, the Union also indicated its concern about the Employer's breaches of subsections 43 (1), (2), (3), (4), (5), (6) and (11). However there is no evidence any of these matters were ever put before any of the inspectors. In these circumstances, it is difficult to understand how the Union can be found to be aggrieved by decisions by the inspectors when their complaints about these breaches were not presented to the inspectors for their consideration. While I am mindful that an inspector ought to consider all matters related to a work refusal it is difficult, if not impossible, for these inspectors to have dealt with those issues in circumstances where they were not raised as matters to be determined."

(See also *Xstrata Canada Corporation, supra* at paragraphs 14 to 17.)

33. Although I understand and agree that the Act is both protective and remedial and must be given a broad and purposive interpretation, the order appealed from is an order following an investigation at Wightman to re-inspect to verify the accuracy of the existing asbestos survey at Wightman. Although ETFO may have been losing confidence (whether justifiably or not) in the School Board's willingness to deal with asbestos problems throughout all of its schools, that is not what the inspector was doing on September 27th at Wightman when he issued his order. Although ETFO may point to memo(s) it gave the MOL or the inspector on earlier occasions or stages which suggest or raise (tangentially or otherwise) other schools (besides Wightman), neither inspector orders on other subjects nor MOL non-action in those circumstances were appealed by or challenged by ETFO. Even if those memo's were relevant (and it is unclear since it does not appear that any demands for inspectors at those other schools were made by ETFO), the simple fact is that they were not pursued. It is only this September 27th order that is being appealed.

34. Therefore, I accept and am persuaded by the MOL and School Board's position that the scope of this appeal is confined to Wightman. The School Board wide relief that ETFO seeks for all of the School Board's schools and not just Wightman is beyond the jurisdiction of the Board in this appeal.

35. Even if I were not persuaded by the ample jurisprudence (and I am), the practicalities of this appeal demonstrate the soundness of that jurisprudence. If in the course of determining what happened at Wightman the Board is also called upon to hear evidence about all of the other schools where ETFO has concerns (valid or otherwise) but where there has been no inspection let alone an inspector's order or refusal to give an order at the behest of ETFO or any of its members, this hearing could become unmanageable, and even if manageable, extremely protracted. Although the efficiency of one particular hearing before the Board is not determinative, for the Act itself to be effective and for the Board to be able to meaningfully and effectively regulate the health and safety jurisdiction assigned to it (or in other words to fulfill its protective and remedial function), disputes about orders or non-orders and the appeals from them must be precise and specific. Simply because ETFO may characterize (fairly or not) the School Board's attitude at Wightman to be inadequate, cavalier or non-responsive to a system-wide problem with asbestos in many schools, does not mean that the Board can grant relief in the Wightman appeal against the School Board for all of its other schools.

36. I have reached this conclusion without necessarily commenting on or determining what was argued about the proper interpretation of the Regulation. Even if I accept ETFO's assertion that the facts would demonstrate that ACM was continuing to fall in room 114B, that is at Wightman and not at the other schools.

37. None of this is to suggest that ETFO is not entitled to continue its appeal of this order and seek the relief it wishes insofar as it relates to Wightman – or for that matter to initiate proper proceedings with respect to any other school. Any evidence however that is necessary at the hearing of this appeal will be only that evidence that is relevant to the situation at Wightman.

38. Accordingly, ETFO is directed to write the Registrar within ten (10) days of the date of this decision indicating whether it wishes to pursue its appeal. If ETFO and the other parties are unable to agree on further hearing dates among themselves, they will be set by the Board.

39. I am not seized.

3623-10-G Brick and Allied Craft Union of Canada, Local 2 and International Union of Bricklayers and Allied Craftworkers, Local 2, Applicants v. **Limen Group Ltd.**, Responding Party v. Masonry Industry Employers' Council of Ontario/Ontario Masonry Contractors' Association – BACU Bargaining Committee, Intervenor No. 1; Labourers' International Union of North America, Ontario Provincial District Council and Labourers' International Union of North America, Local 506, Intervenor No. 2; Brick and Allied Craft Union of Canada, Local 31 and International Union of Bricklayers and Allied Craftworkers, Local 31, Intervenor No. 3; Terrazzo, Tile & Marble Guild of Ontario, Inc., Intervenor No. 4.

Construction Industry Grievance – Damages – Jurisdictional Dispute – *Prima Facie* Motion – BACU Local 2 sought damages in a construction industry grievance following a determination in a jurisdictional dispute in which the Board found that Limen had incorrectly assigned work in dispute to BACU Local 31 – PCL had awarded the contract to Limen, who entered into a voluntary recognition agreement with Local 31 to take advantage of the lower wage requirements under that agreement (tile v. brick) – Limen brought a motion to have the grievance dismissed on the grounds that Local 2 had no *prima facie* case for recovering damages – The Board reviewed its case law regarding the awarding of damages arising from an improper assignment of work, affirming such an award should be restricted to instances where the employer's decision was not *bona fide* or was clearly unreasonable – On this motion, the Board held that it must be satisfied that Local 2 "cannot possibly succeed" in its claim for damages – The Board rejected the view that to allow Limen to go scott-free would signal a "free pass" for employers to enter into new agreements when it suited them; similarly, the Board did not fault Limen for entering into the VRA with Local 31 after having secured the tile work, but before the work actually commenced – Ultimately, the Board was not satisfied that it would *never* find an employer liable to pay damages for contravening a collective agreement by entering into a VRA with a second union, thereby creating the basis for a jurisdictional dispute – Motion dismissed; matter continues

BEFORE: *Harry Freedman*, Vice-Chair.

APPEARANCES: *Donald K. Eady* and *Tom Williams* for the applicants; *Dan J. Shields* and *Arran Brannigan* for the responding party; *David Bannon* and *John Blair* for intervenor no. 1; no one appearing for the other intervenors.

DECISION OF THE BOARD; May 17, 2012

1. The responding party ("Limen") moved by way of a preliminary motion to have this grievance referral to the Board for determination under section 133 of the *Labour Relations Act, 1995*, S.O. 1995, c. 1 as amended (the "Act") dismissed on the grounds that in the circumstances in which this matter arose the applicants ("Local 2") have no *prima facie* case for recovering damages from Limen.

2. Limen contends Local 2's grievance claiming damages arose out of Limen assigning work to members of intervenor no. 3 ("Local 31") rather than to members of Local 2. That grievance triggered Local 2 initiating a work assignment complaint under section 99 of the Act that was subsequently determined in its favour. Limen submits the Board does not award damages in a grievance arising out of a jurisdictional dispute other than in rare or exceptional circumstances. The circumstances relating to the work assignment in issue do not, according to Limen, merit the Board awarding damages.

3. The grievance that is the subject of this referral was delivered to Limen in October 2010. It claimed Limen had violated the collective agreements by which it and Local 2 are bound (the "Brick Agreements") by using persons who were not members of Local 2 to perform certain work coming within the scope of those collective agreements. That work had been assigned by Limen to members of Local 31. That grievance was referred to the Board in early February 2011 and was adjourned *sine die* on agreement of the parties pending the disposition of a work assignment complaint Local 2 had subsequently filed at the end of February 2011 (Board File No. 3895-10-JD).

4. The consultation in Board File No. 3895-10-JD took place on October 20, 2011. By decision dated November 8, 2011 (2011 CanLII 71736; [2011] OLRD No. 4300) the Board found that Local 2 had established that the assignment of exterior stone pavers installation work at the Toronto Dominion Centre by Limen to members of Local 31 was incorrect. As a result, the Board declared that the manual placement and setting of granite or stone on cement drypack or mortar base (the "Work in Dispute") at the Toronto Dominion Centre should be assigned to members of Local 2.

5. Local 2 sought to pursue its claim for damages after the Board issued its November 8th decision finding that Limen had incorrectly assigned the Work in Dispute to members of Local 31 and should have assigned that work to its members. Local 2 asserts that not only did Limen violate the Brick Agreements in having members of Local 31 perform the Work in Dispute, Limen acted unreasonably and in bad faith when it decided to breach the Brick Agreements by assigning the work in dispute to members of Local 31.

6. Local 2, Limen and intervenor no. 1 ("MIECO") agreed on the facts[1] for purposes of arguing Limen's motion.

THE FACTS

7. PCL was the general contractor responsible for the replacement of the exterior granite or stone pavers at the Toronto Dominion Centre renovation project. PCL was bound by the Brick Agreements. PCL was not bound by collective agreements to which Local 31 is bound (the "Tile Agreements"). Under the Brick Agreements, PCL was required to subcontract work coming within the scope of the Brick Agreements to subcontractors bound by the Brick Agreements. The Work in Dispute came within the scope of the Brick Agreement.

- [1] The parties agreed that for purposes of the motion the Board would accept as proved the facts set out by Local 2 in the consultation briefs it had filed in Board File No. 3895-10-JD and by the Board in its November 8th decision. The parties further agreed that if the Board dismissed Limen's motion and the matter proceeded Limen had the right to dispute certain of the facts relied on by MIECO and Local 2.

8. PCL awarded the subcontract for the performance of the Work in Dispute to Limen in June 2010. At the time Limen obtained the subcontract for the Work in Dispute from PCL it was bound by the Brick Agreements. It was not bound by the Tile Agreements at that time.

9. Prior to being awarded the subcontract to perform the Work in Dispute by PCL, Limen had never before secured exterior stone pavers installation work.

10. After entering into its subcontract with PCL, Limen contacted Local 31 and signed a voluntary recognition agreement with Local 31 in July 2010. As a result of voluntarily recognizing Local 31, Limen became bound by the Tile Agreements. Limen began performing the Work in Dispute using members of Local 31 under the Tile Agreements in the fall of 2010.

11. Limen had not contacted Local 2 to determine whether it had members available who were competent to perform the Work in Dispute prior to assigning members of Local 31 to carry out that work.[2]

12. Limen had entered into the voluntary recognition agreement with Local 31 in order to take advantage of lower wage rates under the Tile Agreements and the lower WSIB premiums payable for work done by members of Local 31.[3]

13. Invariably, contractors bound by the Tile Agreements are also bound by the Brick Agreements, but a number of contractors bound by the Brick Agreements are not bound by the Tile Agreements.

14. The Board in its November 8th decision determining the work assignment complaint wrote at paragraphs 28 and 29:

> 28. We accept that members of Local 31 and members of the applicants [Local 2] have performed the work in dispute in Board Area 8 in the past. We also accept that the members of Local 31 have been able to secure some more of that work over the last several years. Nevertheless, we are satisfied that the area practice as a whole in Board Area 8 favours the applicants by a significant degree. Local 31 has never challenged the work in dispute being assigned to members of the applicants. The applicants claim they have been unaware of those recent assignments relied on by Local 31 and assert they would have challenged those assignments. We need not determine precisely how much of the work done by members of Local 31 involved exterior stone paver installation and whether the applicants knew about that work or should have known about it.
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> 29. The area practice material relied by the parties establishes that members of the applicants have had a long history of doing the work in

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- [2] Limen made clear it disputed the assertion that it had not contacted Local 2 prior to assigning the Work in Dispute to members of Local 31 but for purposes of its motion accepted that allegation as proved. Moreover, Limen in its consultation brief filed in connection with Board File No. 3895-10-JD wrote at paragraph 18: "…Limen investigated the availability of manpower to perform [the Work in Dispute] and determined Local 2 would be unable to supply either working foremen or tradesmen skilled in the performance of the work."
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- [3] Limen at paragraph 10 of its consultation brief wrote: "Limen specifically denies that it was motivated in any fashion by moderately lower wage rates or WSIB charges in the assignment of the [Work in Dispute]".

> dispute in Board Area 8. Local 31, quite fairly, acknowledged that the applicants' members had historically performed most of that work in Board Area 8 up to about the early to mid 1990's. While the more recent area practice material suggests Local 31 has been successful in securing some of that work, that recent area practice does not, in our view, outweigh the well established jurisdiction the applicants have had over the work in dispute in Board Area 8. In that regard, there is not the same extensive commercial office development construction taking place in Board Area 8 as there was some 30 or 40 years ago. The applicants' members continue to perform the work in dispute, admittedly not to the same degree, but as the applicants argue, that is likely more a function of what work has been available rather than a ceding of jurisdiction over that work to Local 31.

It is clear that both members of Local 2 and members of Local 31 have been assigned to perform the Work in Dispute in Board Area 8.

15. Limen is also bound by a collective agreement with intervenor no. 2 (the "Labourers"). The Labourers do tending for the members of Local 2 when they are assigned work under the Brick Agreements. The Labourers do not normally do tending for members of Local 31 when they are working under the Tile Agreements.

16. Limen did not comply with the provisions of the Tile Agreements that required members of Local 31 to do their own tending. It assigned members of the Labourers to tend the members of Local 31 when they were engaged in the Work in Dispute. Local 31 acquiesced in the assignment of that tending work to the Labourers.

17. The Board at paragraph 3 of its November 8th decision noted that the tending work carried out by the Labourers involved "unloading, setup and operation of the mega mixer and the handling to the point of installation of Dry Pack and/or Mortar". The Labourers said the handling was done manually or by motorized buggy. Local 31 asserted the handling done by the Labourers at the Limen project where the Work in Dispute was being performed was done exclusively by motorized buggy. The work done by the Labourers was not an issue in that proceeding as there was no challenge to the propriety of the assignment of the work to the Labourers.

THE LABOUR RELATIONS CONTEXT

18. Normally, when a party to a collective agreement contravenes the collective agreement and as a result of that contravention the other party suffers a foreseeable loss that can be quantified, the party that had contravened the collective agreement is liable to compensate the other party for that loss, even if the contravention was unintentional. That principle is succinctly set out in Fridman, *The Law of Contract*, where the learned author writes at the opening of the chapter on damages:

> When a contract has been broken, the remedy at common law is generally an action for damages.... it does not matter whether the breach was deliberate or wilful or accidental and unintended....

See also *C. E. Lummus Canada Ltd.*, [1984] OLRB Rep. May 686.

19. Where, however, the contravention of the collective agreement by an employer arises from what is later determined to be an improper assignment of work to members of a trade union, the Board is loathe to award damages that flow from that improper work assignment. The Board had first articulated

the rationale for that principle in *Sayers & Associates*, [1994] OLRD No. 3212 in which the Board wrote at paragraphs 12 through 19:

> 12. Conflicting claims to work jurisdiction are a fact of life for employers in the unionized construction industry.... Contractors make work assignment decisions in a variety of situations, such as when they are bidding for work; when pre-job mark-up meetings are held for the purpose of informing the trade unions (and considering their responses) about whose members will perform particular packages of work on a project; and, during the execution of jobs when one trade union perceives that "its work" is being done by members of another trade union.
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> 13. When a conflict arises between trade unions about an employer's assignment of particular work, the employer does not have the luxury of unlimited time in which to consider the relative merits of the competing claims before making the assignment. Therefore, when employers in circumstances such as were present here make their best decision, but on challenge under section 93 [now section 99] of the Act are found to have made the "wrong" assignment, the appropriate remedy is a direction to "correct" the assignment; in other words, direct the employer to assign the work to the members of the trade union which the Board found to have the better claim to the work.
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> 14. That has been the Board's usual remedy in section 93 [now section 99] applications whenever it has concluded that an employer has assigned work to members of one trade union, trade or craft when it should have assigned it to members of another trade union, trade or craft. When that happens to an employer in circumstances like those present with these applications, where the employer considered the relevant factors and made a reasonable assignment (albeit one found by this Board to be incorrect), the employer should not then be subject to damages for lost wages because its incorrect assignment has put it in apparent breach of hiring hall, sub-contracting, or other work protection provisions of a collective agreement to which the employer is bound. That would result in the employer having to pay twice for the same work because of a contest between two trade unions over which one's members should do the work, and in a context where the assignment was reasonably made and the work in question was covered by both collective agreements.
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> 15. The Board recognizes fully that paying twice for the same work is the natural consequence befalling the employer who attempts to circumvent its collective agreement obligations by hiring outside the hiring hall provisions or subcontracting contrary to the requirements of the agreement and is found in breach of the collective agreement. Such provisions are there to prevent employers from avoiding their obligations to pay the wages, benefits and other terms of a collective agreement. *Therefore, when an employer knowingly or carelessly breaches those protections and, as a result, members of the union lose wages or opportunities to earn wages, damages in the form of compensation for the losses are appropriate even though the damages represent a second payment for the work done in breach of the collective agreement.*

> 16. *Those are materially different circumstances than where an employer has rationally considered the relative merits of competing claims for the disputed work, decided that it should be assigned to the members of one disputing union instead of another one, and then later is found by a tribunal, like the Board, which adjudicates such disputes to have made the wrong assignment.* In the latter circumstances, it would not be in the long term labour relations and economic interests of construction industry employers, trade unions and their members to require employers to pay twice for work performed during incorrect assignments.
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> 17. The Board is not overlooking the fact that members of the trade union to whom the work should have been assigned, and who were available to do the work, have lost an opportunity to earn wages as a result of the incorrect assignment. It well may seem something of a hollow victory for the "winning" union and its members to be told that the work should have been assigned to them, and then not be redressed for lost wages. *However, the successful union and its members do benefit from the precedent setting nature of the award respecting future assignments by that employer of the same kind of work in the same Board area. It also has precedential value respecting other employers when assigning the same work in circumstances which are materially similar.* [emphasis added]

20. The principle discussed in *Sayers & Associates* was adopted by the Board in *Robertson Yates Corporation Limited*, [1995] OLRB Rep. Feb. 158 in which the Board explained why damages arising from an improper assignment of work contrary to a collective agreement ought to be awarded only when the union claiming damages establishes that the work assignment was unreasonable. The Board wrote at pages 164-65:

> 25. The reality is that contractors and employers *are regularly bound to collective agreements with different trades, each of which cover work of a particular sort, binding the contractors or employers to assign particular work to both unions.* The requirements are often irreconcilable. And the reality is that these collective agreements are negotiated in a context where the bargaining parties are fully aware of this when the agreements are settled. The parties are under no apprehension that the granting of subcontracting protection in these areas of overlap of work jurisdiction will necessarily guarantee a union the work. They both realize that there may still be valid claims to the work by competing unions. [emphasis added]
>
> . . .
>
> 28. Damages should be restricted to those circumstances in which the Board concludes that a contractor/employer did not act reasonably, not those circumstances in which an employer reasonably was wrong.
>
> 29. And there will no doubt be occasions when the Board might award damages; for example, where an employer wrongfully declines to hold a mark-up meeting, where the employer assigns contrary to generally accepted practice or to Board decisions indicating the correct methodology or assignment, or when the Board is not satisfied the assignment was made in a *bona fide* manner or for a *bona fide* purpose. This does not purport to be an exhaustive list.

21. The Board has made it clear that a trade union ought not to be able to recover damages arising from an incorrect assignment of work to members of another trade union unless the circumstances giving rise to that work assignment demonstrate the employer's decision was not *bona fide* or was clearly unreasonable. The Board in *Findlay-Jones Insulation Ltd.*, [1999] OLRB Rep. Jan./Feb. 34 succinctly stated that principle at page 42:

> Further, the Board's general approach is not to award damages in jurisdictional dispute complaints either. However, the Board does not consider a blanket prohibition against damages to be appropriate. The Board retains the discretion to award damages. This can act as a deterrent to the few employers who might otherwise ignore a clear and well established jurisdictional separation between trades, and recognizes that there may be circumstances, however rare, in which damages are an appropriate remedy.

THE ISSUE

22. Limen submits the issue is whether Local 2 has established a *prima facie* case for the Board to award damages arising from its failure to use members of Local 2 to perform the Work in Dispute.

23. Local 2 and MIECO contend, at the very least, Local 2 has established an arguable case for the Board to award damages. They submit the grievance must not be dismissed on a *prima facie* motion unless it is "plain and obvious" there is no reasonable likelihood that the Board would exercise its discretion and award damages as a consequence of Limen's violation of the Brick Agreements.

APPLICABLE PRINCIPLES

24. As this matter has been argued on the basis that Local 2 has not established a *prima facie* case for obtaining damages, Limen must satisfy the Board that on the facts as alleged by Local 2 and without regard to the rationale Limen may have had for the decision it made to assign the Work in Dispute to members of Local 31, it is quite improbable the Board would find Limen liable for any damages resulting from its violation of the Brick Agreements.

25. The test the Board applies when it is asked to dismiss a claim because it fails to set out a *prima facie* case is a strict one. In this case Limen must satisfy the Board that there is no reasonable likelihood that the allegations made by Local 2 in this proceeding would justify the Board finding Limen liable to pay damages as a consequence of its violation of the Brick Agreements by improperly assigning the Work in Dispute to members of Local 31. See *Caravelle Foods*, [1983] OLRB Rep. June 875; *J. Paiva Foods Ltd.*, [1985] OLRB Rep. May 690; *Corporation of the County of Brant*, [2000] OLRB Rep. Nov./Dec. 1106 at page 1108; *Hunt v. Carey Canada Inc.*, [1990], 2 S.C.R. 959 at 980; *Alberta* v. *Elder Advocates of Alberta Society*, [2011] 2 S.C.R. 261 at 273; *R.* v. *Imperial Tobacco Canada Ltd.*, [2011] 3 S.C.R. 45.

26. The Board has also made it clear that when it is satisfied that the party requesting the dismissal of an application for failing to establish a *prima facie* case has met the required burden, it is incumbent on the Board to dismiss the application, thereby conserving the limited resources of the Board for matters requiring a hearing. In doing so, the Board has relied on the words of Mr. Justice Grange in *Shaw v. McLeod*, (1982), 35 O.R. (2d) 631:

> I concede that on this motion if, after a careful review of the law, the Court determines that he [the Plaintiff] cannot possibly succeed, then his action should be mercifully dispatched.

The question I need to determine is whether Local 2 "cannot possibly succeed" in its claim for damages based on the facts it alleges and without regard to Limen's rationale for its decision.

SUBMISSIONS

27. Local 2 and MIECO argue that Limen's decision to assign the Work in Dispute was not *bona fide* and in any event, was clearly unreasonable. Local 2 acknowledges that if Limen had been bound by both the Tile Agreements and the Brick Agreements when it successfully secured the subcontract from PCL to carry out the Work in Dispute then Limen would have been in the same situation as any other contractor who is faced with competing claims for work and has to decide how to best assign that work. In that circumstance, the Board's normal approach to not awarding damages would apply. Local 2 quite properly concedes it would be highly unlikely that in those circumstances it could persuade the Board to allow it to pursue its claim for damages.

28. Local 2 and MIECO point out that it is not just the fact that Limen entered into the Tile Agreements with Local 31 after it secured the subcontract from PCL that supports their position. More significantly, they argue that Limen was only eligible to bid on and secure the subcontract to perform the Work in Dispute as a result of being bound by the Brick Agreements. They submit it is particularly egregious on the part of Limen to voluntarily recognize Local 31 and become bound by the Tile Agreements only after obtaining the subcontract from PCL when PCL, as a result of being bound by the Brick Agreements, was obliged by the Brick Agreements to subcontract the Work in Dispute to a contractor bound by the Brick Agreements.

29. MIECO contends the other contractors bound by the Brick Agreements that were bidding for the Work in Dispute, knowing that PCL was bound by the Brick Agreements, were unfairly disadvantaged when Limen secured that work and then promptly entered into a recognition agreement with Local 31 and thereby took advantage of the lower rates in the Tile Agreements and lower WSIB premiums payable for work done by members of Local 31. MIECO argues its position as an employer bargaining agency was undermined in the circumstances since PCL was required to subcontract the work to contractors bound by the Brick Agreements. There was, according to MIECO, a "level playing field" created by the subcontracting provision of the Brick Agreements for all the contractors seeking to secure the Work in Dispute from PCL since they all had to be bound by the Brick Agreements. Limen, by entering into the recognition agreement with Local 31 and subsequently assigning that work to members of Local 31 under the Tile Agreements changed the nature of the foundation for that "playing field".

30. MIECO also submits that allowing Limen to circumvent the obligations to perform the Work in Dispute under the Brick Agreements by permitting it to violate those agreements by assigning members of Local 31 to perform that work and then resist the claim for damages by asserting the incorrect assignment involved competing claims for the work that was only resolved through a jurisdictional dispute would allow any contractor to get "one free pass" to undermine the jurisdictional provisions of a collective agreement. It argues an employer bound by the Brick Agreements could choose its "free pass" on a particularly significant job by obtaining the work and then entering into a collective agreement with another union to carry out that work at a lower cost. If the Board were to allow Limen to escape paying damages in this case, MIECO submits the Board would be providing a blueprint to every other contractor bound by the Brick Agreements to use that "free pass" on a large job when it would be particularly profitable to bid unfairly against other contractors with the knowledge that the work could be done at lower rates.

31. Local 2 also argues that Limen's failure to contact Local 2 about securing qualified Local 2 members to carry out the work is further support for its argument that Limen acted in bad faith, or at the very least unreasonably when it decided to assign the Work in Dispute to members of Local 31.

32. Both MIECO and Local 2 submit they have demonstrated that they have an arguable case for the Board to award damages in the circumstances. While conceding it is quite rare for the Board to award damages arising out a work assignment that was determined to be improper in a jurisdictional dispute proceeding and that there has not been a case before the Board even similar to this one in which damages were awarded, they submit the Board should allow them to proceed to prove the case for damages because the Board ought not to conclude that they "cannot possibly succeed" in persuading the Board damages are appropriate on the facts of this case.

33. Limen submits the Board has developed and refined its approach to awarding damages in a contested work assignment situation. It argues the Board in the two cases in which damages were awarded made it clear that there is a very high threshold a union seeking damages must cross, and has clearly defined what will precipitate an award of damages. It submits there is nothing in the circumstances put forward by Local 2 and MIECO that comes even close to meeting, let alone getting over, that threshold.

34. Limen accepts the test for awarding damages is an unreasonable decision by the contractor in making the work assignment. It points out that that Local 2 claims the decision was unreasonable because Limen sought to have the work done by members of Local 31 to take advantage of the lower rates in the Tile Agreement and lower WSIB premiums. Limen also acknowledges the unreasonableness asserted by Local 2 is based on the disputed allegation that it did not contact Local 2 to find out if there were members available to do that work. Finally it argues Local 2 asserts its decision was unreasonable because it entered into the Tile Agreements only after securing the work from PCL.

35. Limen submits that those facts do not, even if established, provide any foundation for finding unreasonableness based on what the Board has said is necessary to lead to a finding that a work assignment decision is unreasonable.

36. Limen points to the Board's analysis in *The Roberts Group Inc.*, [2004] OLRB Rep. Sept./Oct. 972 as providing some meaning to the term "unreasonable" when assessing whether damages ought to be awarded after making work assignment to the "wrong" union. The Board at page 973 set out the general principles dealing with a claim for damages arising after a jurisdictional dispute is decided:

> The Board has said on numerous occasions, that damages are *prima facie* inappropriate, in a situation where an employer assigns work to one trade (or group of trades) and another union complains of this assignment, files a grievance and jurisdictional dispute, and in the end succeeds in persuading the Board that the work should have been assigned to them. Where an employer is faced with conflicting and irreconcilable claims to the work, and cannot avoid breaching one of the collective agreements to which it is bound, no matter what it does, damages are not appropriate for a violation that may be inevitable. The Board has said, however, that there is one very narrow exception to this general rule: the Board might find that damages are appropriate if the employer made the assignment in a careless or unreasonable fashion or that it made the assignment in bad faith. (In fact, the Board has only referred to the possibility of awarding damages in a hypothetical way.

> It has never been faced with a motion for damages before this application.)

The Board in *The Roberts Group Inc.* indicated that a contractor's decision can be "substantively" unreasonable or the decision making process applied by the contractor can be unreasonable. Those two types of "unreasonableness" are discussed at page 978 of that decision:

> 17. These brief comments refer to two different types of actions of an employer that might be found to be unreasonable. The first, and more serious type of unreasonable action, is a decision that is found to be substantively unreasonable. If an employer assigned work in the face of one or more decisions of this Board made in reasonably similar circumstances (provided the employer is made aware of them), or assigned work in a manner contrary to generally accepted practices, such a decision will be unreasonable as well as simply wrong. That is, the Board would have to conclude that no employer considering the assignment question on a rational and reasonable basis could have come to this decision Such a decision is then unreasonable on a substantive basis. This is a very high standard and will be found only rarely.
>
> 18. The other type of case will be one in which the process of the employer's decision-making process is unreasonable. The Board's concern expressed in the cases cited above about bad faith, carelessness or failure to hold a markup meeting where a collective agreement or custom requires one, are directed at process rather than the ultimate result. An employer may be found to have acted unreasonably if its motives are tainted by bad faith, or the procedure it adopts in making its decision is so deficient or negligent as to be properly characterized as unreasonable. This is a much more problematic area, but may also be one where the Board finds that damages are appropriate.

The Board found the employer's decision was not unreasonable in that case, but held that its decision making process was careless and superficial. As a result the Board found the employer was liable for damages based on the grieving union's lost opportunity to persuade the employer it ought to have received the work, which the Board suggested at page 982 would be, in the circumstances, "nominal at best."

37. Limen submits the facts relied on by Local 2 do not fit within either of the two types of "unreasonableness" established by the Board in *The Roberts Group*. With respect to substantive unreasonableness, it submits that members of Local 31 have performed the work in dispute in Board Area 8. There was no Board decision in respect of Board Area 8 dealing with that type of work and no generally accepted practice of assigning the Work in Dispute to members of Local 2. Moreover, on the facts as alleged by Local 2, Limen had a rational basis for the assignment. Limen points out that Local 2 in essence asserts Limen made the assignment because it was more economical for Limen to use members of Local 31 by reason of the lower wage rates in the Tile Agreements and lower WSIB premiums. On that basis, Limen's decision to assign the work to members of Local 31 was clearly reasonable.

38. Limen also contends there are no facts that could possibly to lead to a conclusion of bad faith or a flawed process. It argues Local 2 relies on the fact it entered into a recognition agreement with Local 31 after it secured the subcontract from PCL and that it failed to contact Local 2 about availability of members who were able and available to do the work to support a conclusion of bad faith. There are no allegations about Limen having engaged in a faulty or negligent decision making process. Limen points

out that the essence of Local 2's case for damages rests on it having entered into the recognition agreement with Local 31.

39. Limen relies on several Board decisions to argue that an assessment of the reasonableness of the work assignment when deciding whether damages ought to be awarded do not rest on whether the employer assigned the work in accordance with a collective agreement. It submits that the existence of a collective agreement covering the employees who were assigned the work is not relevant to the Board's determination of whether an employer ought to be liable to pay damages for breaching the collective agreement with the trade union the Board found should have had the work assigned to its members. Limen suggests for that reason that the fact it entered into a recognition agreement with Local 31 after it secured the subcontract from PCL to carry out the Work in Dispute is irrelevant to whether the Board would conclude Local 2 to is entitled to damages.

40. Limen asserts that it is not the existence of overlapping collective agreements that create jurisdictional disputes but rather it is the assignment of the work by the employer that gives rise to a jurisdictional dispute. Limen relied on the following statement in *Robertson Yates Corporation Limited, supra* at page 164:

> Ultimately, it is the work assignment decision a that [sic] determines which union is entitled to the work. It is not ordinarily the collective agreement which secures the work, regardless of its clauses. Damages ought not to flow, therefore, simply because the assignment was made contrary to a particular clause in the collective agreement.

That same principle was accepted by the Board in *Bondfield Construction Co.*, [2007] OLRB Rep. May/June 499 when the Board wrote at pages 513-14:

> The reliance on the certification by the Painters cannot be held to be a sufficient or reasonable basis for Bondfield's actions. Although bargaining rights are a factor which is considered, competing collective agreements are the norm in virtually every jurisdictional dispute and are generally the starting point of, rather than the determining factor in, such disputes. … Here, even the most cursory reading of the Board's decision in *Brunswick, supra*, [*Brunswick Drywall Limited*, [1982] OLRB Rep. Aug. 1143] is sufficient to establish that the award of the taping work to the Bricklayers was not dependent on their bargaining rights but was instead the result of the practice which the Bricklayers had built-up, in many cases, in spite of which union held what bargaining rights. In *Brunswick, supra*, the Board clearly determined as a fact that the Bricklayers' were performing taping work not only when they had exclusive, or even shared, bargaining rights but even in those situation where only the Painters had bargaining rights. Brunswick itself, which was the only employer responding party in that case, only had an agreement with the Painters and had no collective agreement with the Bricklayers and yet the Board still awarded the work to the Bricklayers. Further, as the Board's jurisdictional dispute decision makes clear, after *Brunswick, supra*, the Bricklayers have continued to perform this work in the Kingston area, even for companies which were only bound to agreements with the Painters, and both the Painters and Bondfield had recognized and participated in this ongoing area practice.

Limen submits that since neither a collective agreement nor bargaining rights are necessary to create a jurisdictional dispute, it has demonstrated that the foundation for the position taken by Local 2 for claiming damages, which is based on Limen having entered into a collective agreement with Local 31 after obtaining the subcontract from PCL to do the work, simply does not exist.

41. Limen also relied on *Béton Préfabriqués du Lac Inc.*, 2011 CanLII 83045 (ON LRB) in which the Board wrote at paragraph 7:

> The assignment to the Ironworkers, even though they did not hold bargaining rights, does not assist the Labourers in a damage claim where those damage claims arose in a grievance referral associated with jurisdictional dispute claims.

Limen argues on that basis there is simply no reasonable possibility on the facts as asserted by Local 2 that the Board would find Limen liable to pay damages to Local 2.

ANALYSIS AND CONCLUSIONS

42. It seems to me the essence of Limen's argument is that there is no reasonable likelihood that the Board would find an employer liable to pay damages for violating the union security provisions of a collective agreement by which it is bound by assigning work to members of another trade union if it entered into a collective agreement with that other trade union in order to assign work to members of that other trade union and the Board in dealing with the jurisdictional dispute that resulted from the employer's conduct held the employer's work assignment was incorrect.

43. The hearing in *The Roberts Group Inc.* case proceeded before the Board on an agreed statement of facts. One fact the Board noted at page 975 was, in my view, material to the Board's ultimate conclusion in that decision:

> What is absent from the agreed Statement of Facts and the evidence before us is any evidence about why Roberts made the assignment, and what its thought process was.

44. The analysis used by the Board in *The Roberts Group, supra* was applied later in *Bondfield Construction Co., supra* where the Board awarded damages as a result of an incorrect work assignment. The Board stated at page 510:

> Here there can be no question that this work was assigned to members of the Painters contrary to two of the very factors which the Board has consistently held would constitute indicia of unreasonableness, specifically a Board decision made in reasonably similar circumstances and generally accepted work practices in the area. None of the cases previously decided by the Board have facts which in any way approach these facts.

The Board in that decision emphasized the existence of a well established practice in the applicable Board area of assigning the work in issue to the union that successfully claimed the work in the jurisdictional dispute proceeding and the existence of a Board decision the employer was aware of dealing with the correct assignment of that work. The Board concluded its discussion by pointing out at page 516:

> Finally, the Board wishes to reiterate that this decision in no way alters its longstanding jurisprudence concerning damages and jurisdictional

> disputes. Although this in the first case in which damages have been awarded in such a context this decision should not be, and cannot be, read as in anyway altering the clear principles first established by the Board in *Sayers & Associates Limited, supra.* This is an extremely unusual case involving an employer awarding work contrary to a previous decision of the Board (of which it was aware) and contrary to generally accepted area practice. As such the Board regards this case as the extremely rare "exception that proves the rule" rather than being an alteration or a weakening of the principle that in the overwhelming majority of cases, damages are not appropriate in the context of a jurisdictional dispute.

The Board in *Bondfield Construction Co.* suggested its decision in that case was the first time the Board had awarded damages. The Board earlier in *The Roberts Group* determined the employer was liable for nominal damages because although its assignment was not unreasonable as a substantive matter, its decision making was flawed. In *Bondfield Construction Co.* the Board held the employer was liable for damages because its decision to assign the work was substantively unreasonable.

45. Both Local 2 and MIECO rely in large part on Limen's decision to enter into the voluntary recognition agreement with Local 31 and becoming bound by the Tile Agreements after securing the subcontract from PCL to contend that damages are appropriate.

46. I do not accept the argument made by MIECO that allowing Limen to avoid paying damages in this case creates a blueprint for employers to get "one free pass" when it suits them nor do I accept that Limen undermined MIECO and prejudiced other contractors bound by the Brick Agreements by entering into the voluntary recognition agreement with Local 31 and thereby becoming bound by the Tile Agreements after it secured the work from PCL.

47. The Board, starting with *Sayers & Associates, supra* and in all the subsequent cases, has made it clear that an employer that assigns work contrary to one collective agreement to members of another trade union is not liable in damages for violating that collective agreement except in the rarest of circumstances.

48. It is also important to note that there was nothing to preclude PCL from awarding the work in dispute to a contractor that was bound by both the Brick Agreements and the Tile Agreements. The parties agreed that contractors who were bound by the Tile Agreements were invariably bound by the Brick Agreements. Therefore, the fact that Limen became bound by the Tile Agreements after it secured the subcontract from PCL neither prejudiced other contractors who were bidding on the work or changed the nature of the "playing field". PCL would have met its subcontracting obligations under the Brick Agreements if it had subcontracted the Work in Dispute to a contractor bound by both the Tile Agreements and the Brick Agreements. That contractor could then determine whether to assign that work to members of Local 31 or to members of Local 2.

49. Although I do not find that MIECO's submissions constitute a proper basis for dismissing Limen's motion, I am persuaded by Local 2 that Limen must explain its decision to assign the Work in Dispute to members of Local 31. That is, in the absence of a reasonable explanation for its decision, I am of the view that it is at least arguable the Board could find it appropriate to award damages arising from Limen's violation of the Brick Agreements.

50. The Board's decisions articulating why the Board will not award damages in a grievance proceeding arising out of a jurisdictional dispute have invariably arisen when the employer that made the assignment and from which damages were sought was faced with two conflicting claims for the work

arising from overlapping collective agreements. I accept Limen's argument that a jurisdictional dispute does not arise by reason of overlapping collective agreements or conflicting bargaining rights. Rather it arises from the actual assignment made by the employer. Nevertheless, the employer's determination about a proper assignment of work must take into account, at the very least, the work jurisdictions of the trade unions that hold bargaining rights for the employees of that employer.

51. The only Board decision Limen brought to my attention in which the Board refused to find an employer liable to pay damages when that employer assigned work to members of a trade a union that did not have a collective agreement with the employer was *Béton Préfabriqués du Lac Inc., supra.* However, as is apparent from the earlier decision determining the merits of the jurisdictional dispute (*Béton Préfabriqués du Lac Inc.*, 2010 Can LII 74593 (ON LRB)) that formed the basis for the claim for damages, the employer had had an ongoing collective bargaining relationship with the Ironworkers in Quebec and had in the past used members of the Ironworkers to perform work in Ontario without having entered into a collective agreement in Ontario.

52. In order for me to grant the motion made I must be persuaded by Limen there is no reasonable possibility that Local 2 will succeed in recovering damages (whether nominal or significant need not be decided at this point) from Limen. Limen has failed to do so.

53. It is significant, in my view, that but for Limen entering into a voluntary recognition agreement with Local 31 after it obtained the subcontract from PCL, it is unlikely any jurisdictional dispute would have arisen. I recognize that Limen had entered into the recognition agreement with Local 31 before it commenced performing the Work in Dispute, but after it had obtained the subcontract from PCL for that work. Limen may have had reasonable grounds for doing so but that is a matter for determination on the merits of case. I also accept that the jurisdictional dispute arose when Limen assigned the work to members of Local 31, not when it entered into the voluntary recognition agreement with Local 31 and became bound by the Tile Agreements.

54. Simply put, I am not satisfied that the Board would never find an employer bound by a collective agreement liable to pay damages for contravening that collective agreement when that employer, after obtaining but before starting certain work, creates the basis for a jurisdictional dispute by entering into a voluntary recognition agreement with another union and assigning work pursuant to that recognition agreement rather than pursuant to the collective agreement by which it had been bound before it obtained the work.

55. As noted earlier[4] in the review of the facts, Limen denied some of the allegations relied on by Local 2 and has made positive assertions relating to the reasons for its decision to assign the Work in Dispute to members of Local 31. Unlike the situation before the Board in *The Roberts Group, supra* Limen has in its material provided some explanation for its decision. However, because the issue came before me as a *prima facie* motion, I cannot have regard to that explanation in assessing whether there is a reasonable possibility that Limen would be found liable for damages.

56. In the result, Limen has failed to satisfy me there is no reasonable likelihood the Board would award damages arising out of Limen having contravened the Brick Agreements by assigning members of Local 31 to perform the Work in Dispute.

57. The motion made by Limen to dismiss this grievance is dismissed.

- [4] See fn 2 and fn. 3, *supra*

58. The parties advised me that if the Board dismissed the motion made by Limen, the Board would first have to determine on the evidence whether Local 2 can demonstrate that it is entitled to claim damages from Limen arising out of Limen's assignment of the Work in Dispute to Local 31, and if so, the quantum of those damages.

59. This matter is referred to the Registrar to be listed for hearing for the purpose of receiving the evidence and representations of the parties with respect to whether Local 2 is entitled to recover damages from Limen arising out Limen's violation of the Brick Agreements by assigning the Work in Dispute to members of Local 31, and if so, the quantum of those damages, if any.

60. Although this panel of the Board is not seized with this matter, the Registrar is requested, if convenient to the Board and the parties, to schedule the continuation of this matter before me.

1192-10-U Mohammad Asif Bhatt, Shahid Qayyum, Khalid Qayyum Khalil, Haroon Wahid and Nazar Hayat Kharal, Applicants v. **Oakville United Taxi Ltd.**, Responding Party.

Conflict of Interest – Between two dates of hearing of an unfair practice complaint, counsel for the applicants accepted employment with the law firm that represented the responding parties – The Board considered whether the lawyer had received confidential information attributable to a solicitor-client relationship and, if so, was there a risk it would be used to the prejudice of the client – Assuming the answer to the first question had to be in the affirmative, the Board then considered whether reasonable measures were taken by the employing firm to ensure that no disclosure would occur by the tainted lawyer to other members of the firm – The measures might include the building of "ethical walls" between lawyers at the firm, monitoring by an independent lawyer, notice to the tainted lawyer's former clients, and the application of the *Rules of Professional Conduct* – The Board held that the steps taken by the responding party's law firm fell short of dispelling a conflict of interest – The law firm was removed as counsel of record for the responding party – Matter continues

BEFORE: *Ian Anderson*, Vice-Chair.

DECISION OF THE BOARD: May 2, 2012

1. This is an application under section 96 of the *Labour Relations Act, 1995*. In essence, the applicants allege that they were employees of the responding party and that the responding party terminated their employment or refused to re-employ them, stating that they had supported a trade union during an unsuccessful organizing drive.

2. Between the first day of the hearing on April 21, 2011 and the second day of the hearing on April 4, 2012, Muneeza Sheikh, counsel for the applicants, accepted employment with Levitt LLP, the law firm representing the responding party. Ms. Sheikh withdrew from representing the applicants (who were self-represented on the second day of the hearing) but Levitt LLP continued to represent the responding party. By decision dated April 5, 2012, the Board directed submissions as to why Levitt LLP should be permitted to continue to act for the responding party in these proceedings.

3. Levitt LLP has filed submissions in response to the Board's decision dated April 5, 2012. It is not clear whether they are filed on behalf of Levitt LLP, the responding party or both. I will assume that they were filed on behalf of both. The submissions were accompanied by an affidavit from Ms. Sheikh.

The Legal Framework

4. As noted in the April 5, 2012 decision, in *Universal Workers' Union, Labourers' International Union of North America, Local 183 v. Labourers' International Union of North America*, (2004), 70 O.R. (3d) 435, the court held that not only did this Board have concurrent jurisdiction to determine whether or not a law firm was in a conflict of interest in proceedings before the Board, but that the Board was "in a much better position" to make the determination.

5. The seminal case on the law with respect to conflict of interest is *MacDonald Estate v. Martin*, [1990] 3 S.C.R. 1235. In that case, the Supreme Court of Canada noted [at para. 13]:

> In resolving this issue, the Court is concerned with at least three competing values. There is first of all the concern to maintain the high standards of the legal profession and the integrity of our system of justice. Furthermore, there is the countervailing value that a litigant should not be deprived of his or her choice of counsel without good cause. Finally, there is the desirability of permitting reasonable mobility in the legal profession.

6. The Court then conducted an extensive review of the law in Canada and other jurisdictions before articulating the "appropriate test". The Court stated [at para. 44 and 45]:

> .... In dealing with the question of the use of confidential information we are dealing with a matter that is usually not susceptible of proof. As pointed out by Fletcher Moulton L.J. in *Rakusen*, "that is a thing which you cannot prove" (p. 841). I would add "or disprove". If it were otherwise, then no doubt the public would be satisfied upon proof that no prejudice would be occasioned. Since, however, it is not susceptible of proof, the test must be such that the public represented by the reasonably informed person would be satisfied that no use of confidential information would occur. That, in my opinion, is the overriding policy that applies and must inform the court in answering the question: Is there a disqualifying conflict of interest? In this regard, it must be stressed that this conclusion is predicated on the fact that the client does not consent to but is objecting to the retainer which gives rise to the alleged conflict.
>
> Typically, these cases require two questions to be answered: (1) Did the lawyer receive confidential information attributable to a solicitor and client relationship relevant to the matter at hand? (2) Is there a risk that it will be used to the prejudice of the client?

7. In this case, there is no dispute that the first question must be answered in the affirmative: Ms. Sheikh did receive confidential information attributable to a solicitor client relationship relevant to the matter at hand. Accordingly, it is not necessary to review the Court's discussion of the first question. Rather, the issue is the manner in which the second question is to be answered.

8. The Court began by observing [at para. 47]:

> A lawyer who has relevant confidential information cannot act against his client or former client. In such a case the disqualification is automatic. No assurances or undertakings not to use the information will avail.

So, in this case there is no question that Ms. Sheikh cannot personally act for the responding party, nor is there any suggestion that she has. The question is whether or not the other partners or associates of the firm which she has joined, Levitt LLP, can continue to act for the responding party. On this question, the Court observed, the answer is less clear. Nonetheless, the Court did lay out certain principles which govern the manner in which this determination is to be made. The Court stated:

> i. "There is … a strong inference that lawyers who work together share confidences." [para. 49]
>
> ii. "In answering this question, the court should therefore draw the inference, unless satisfied on the basis of clear and convincing evidence, that all reasonable measures have been taken to ensure that no disclosure will occur by the "tainted" lawyer to the member or members of the firm who are engaged against the former client." [para. 49]
>
> iii. "Such reasonable measures would include institutional mechanisms such as Chinese Walls [i.e. Ethical Walls] and cones of silence. …. [I]n the vast majority of cases, the courts are unlikely to accept the effectiveness of these devices until the profession, through its governing body, has studied the matter and determined whether there are institutional guarantees that will satisfy the need to maintain confidence in the integrity of the profession." [para. 49]
>
> iv. "*A fortiori* undertakings and conclusory statements in affidavits without more are not acceptable. These can be expected in every case of this kind that comes before the court. It is no more than the lawyer saying "trust me". This puts the court in the invidious position of deciding which lawyers are to be trusted and which are not. Furthermore, even if the courts found this acceptable, the public is not likely to be satisfied without some additional guarantees that confidential information will under no circumstances be used." [para. 50]

In applying these principles to the case before it, the Court also provided some guidance as to what "more" should be contained in affidavits which were filed. The Court stated [at para 53]:

> Indeed, there is nothing in the affidavits to indicate that any independently verifiable steps were taken by the firm to implement any kind of screening. There is nothing to indicate that when Ms. Dangerfield joined the firm, instructions were issued that there were to be no communications directly or indirectly between Ms. Dangerfield and the four members of the firm working on the case. While these measures would not necessarily have been sufficient, I refer to them in order to illustrate the kinds of independently verifiable steps which, along with other measures, are indispensable if the firm intends to continue to act.

9. These principles have, of course, been developed through their application in other cases. While I do not suggest that this is an exhaustive list, some of the other principles which emerge from the case law are as follows:

> i. Absent sufficient explanation, the Ethical Walls must be in place when the conflict first arises, which in a case such as this will be the effective date of the merger creating the "new firm": *Skye Properties Ltd. v. Wu*, [2003] O.J. No. 3481 (Div. Ct.), affirmed on appeal, [2004] O.J. No. 3948.
>
> ii. The effectiveness of the Ethical Walls should be monitored by an independent lawyer outside the immediate client service team. Indeed, in *1964 Bay Inc. (c.o.b. Budget Car Rentals Toronto Ltd.)*, [2008] O.J. NO. 5048, the Divisional Court held that such counsel must be appointed in order to avoid a finding of conflict of interest [at para. 17]:
>
>> Independent counsel should deal with any issues arising with conflict in terms of setting up screening measures, ensuring that the screening measures are respected, and dealing with any litigation arising as a result of the conflict. The continued involvement of counsel with carriage of the file giving rise to the conflict taints what may well be non-substantive discussions. Involvement of an independent counsel is necessary to meet the objective test so that a reasonably informed person would be satisfied that no use of confidential information would occur.
>
> iii. The new firm should give immediate notice to former clients of the lawyer who has joined the firm of any potential for conflicts and of the steps which the new firm is taking to address the issue. Failure to give such notice is not in and of itself sufficient to give rise to a finding of a conflict of interest, but it is a factor which may be considered along with other factors: *Skye Properties Ltd. v. Wu*, op cit.
>
> iv. While the provisions for addressing conflict of interest developed by the Law Society of Upper Canada in response to *MacDonald Estate* are not binding upon the courts, or this Board, failure to meet at least those provisions will likely result in a finding of conflict of interest: *Inron Contracting Limited v. Whitebread*, [2001] O.J. No. 4277; *Skye Properties Ltd. v. Wu, op cit.*.

Application to This Case

10. I turn now to consider the application of these principles to the case at hand.

11. As noted, Levitt LLP filed an affidavit from Ms. Sheikh in support of its submissions. That affidavit responds to and vehemently denies the allegations made by the applicants, which were set out in the Board's April 5, 2012 decision. For the purposes of this decision, I accept Ms. Sheikh's evidence that she did not continue to act for the applicants after accepting employment with Levitt LLP, or alternatively that to the extent that she did so for a few weeks (by relaying offers to settle) it was with the full knowledge and agreement of the applicants.

12. With respect to steps taken by Levitt LLP to address the conflict of interest, the only material before the Board is one statement in Ms. Sheikh's affidavit and a letter dated April 4, 2012 from Matthew

Dewar, the lawyer at Levitt LLP with current carriage of the file on behalf of the responding party, to one of the applicants. The letter sets out certain measures, described further below, which Mr. Dewar states "were taken by our office when Muneeza Sheikh joined our firm in October 2011".

13. Ms. Sheikh's statement is as follows:

> I have never discussed the contents of this file in any capacity with anyone at Levitt LLP. I have maintained the confidential knowledge that I acquired during the time that I represented the applicants.

This is precisely the kind of statement which, without more, the Supreme Court of Canada has made clear does not discharge the strong inference that lawyers who work together share confidences.

14. A copy of the April 4, 2012 letter is appended to Ms. Sheikh's affidavit. It is not at all clear from Ms. Sheikh's affidavit that she has adopted the letter as part of her evidence or that she has any direct knowledge of the measures set out therein. Assuming that the letter is properly before me as evidence, a number of problems remain.

15. First, the letter was only sent to the applicants (or more precisely, one of the applicants) following the hearing on April 4, 2012 at which I specifically asked Mr. Dewar if notice had been given to the applicants of any measures adopted by Levitt LLP to deal with the conflict of interest and he confirmed that nothing in writing had, up to that point, been sent to the applicants. That is, the applicants were not given timely notice of the measures taken by Levitt LLP.

16. Second, the measures described in the April 4, 2012 letter replicate or paraphrase some of the 12 "guidelines" promulgated by the Law Society of Upper Canada as measures which a firm may adopt in order to ensure that no disclosure to any member of the new firm of the former client's confidential information will occur. The letter, however, is completely silent with respect to any attempt to give effect to the remainder of the guidelines. The Law Society of Upper Canada's guidelines follow below. Levitt LLP has adopted numbers 1, 2, 3, 6, 10 and 12. Guideline 9 was followed only belatedly, as discussed above. There is no evidence that Levitt LLP has done anything in furtherance of guidelines numbers 4, 5, 7, 8 or 11. For ease of reference, numbers 4, 5, 7, 8, 9 and 11 of the guidelines are italicized:

> 1. The screened lawyer should have no involvement in the new law firm's representation of its client.
>
> 2. The screened lawyer should not discuss the current matter or any information relating to the representation of the former client (the two may be identical) with anyone else in the new law firm.
>
> 3. No member of the new law firm should discuss the current matter or the previous representation with the screened lawyer.
>
> 4. *The current matter should be discussed only within the limited group that is working on the matter.*
>
> 5. *The files of the current client, including computer files, should be physically segregated from the new law firm's regular filing system, specifically identified, and accessible only to those lawyers and support staff in the new law firm who are working on the matter or who require access for other specifically identified and approved reasons.*

> 6. No member of the new law firm should show the screened lawyer any documents relating to the current representation.
>
> 7. *The measures taken by the new law firm to screen the transferring lawyer should be stated in a written policy explained to all lawyers and support staff within the firm, supported by an admonition that violation of the policy will result in sanctions, up to and including dismissal.*
>
> 8. *Undertakings should be provided by the appropriate law firm members setting out that they have adhered to and will continue to adhere to all elements of the screen.*
>
> 9. *The former client, or if the former client is represented in that matter by a lawyer, that lawyer, should be advised (a) that the screened lawyer is now with the new law firm, which represents the current client, and (b) of the measures adopted by the new law firm to ensure that there will be no disclosure of confidential information.*
>
> 10. The screened lawyer's office or work station and that of the lawyer's support staff should be located away from the offices or work stations of lawyers and support staff working on the matter.
>
> 11. *The screened lawyer should use associates and support staff different from those working on the current matter.*
>
> 12. In the case of law firms with multiple offices, consideration should be given to referring conduct of the matter to counsel in another office.

17. The Law Society of Upper Canada's commentary makes it clear that the guidelines are intended only as "a checklist of relevant factors to be considered." The commentary continues: "Adoption of only some of the guidelines may be adequate in some cases, while adoption of them all may not be sufficient in others." In my view, the cumulative effect of Levitt LLP's failure to implement guidelines 4, 5, 7, 8 and 11 is that the strong inference that lawyers who work together share confidences has not been rebutted. I note in this respect that these guidelines in particular constitute "independently verifiable steps" that Levitt LLP could have implemented in order to ensure appropriate screening. By contrast many of the guidelines actually adopted are of the "trust me" variety which the Supreme Court of Canada has stated is not sufficient. Given this, I am not satisfied that a reasonably informed person would be satisfied that no use of confidential information would occur.

18. Third, and in any event, there is no evidence to suggest that the measures adopted by Levitt LLP in order to establish an Ethical Wall are being monitored by an independent lawyer outside the immediate client service team. On the contrary: Levitt LLP's submissions with respect to conflict of interest were filed by the lawyer with carriage of the file on behalf of the responding party. Those submissions include an affidavit from the very lawyer with whom he was to have no communication. As stated in *1964 Bay Inc. (c.o.b. Budget Car Rentals Toronto Ltd.)*, this "taints what may well [have been] non-substantive discussions".

19. I conclude that Levitt LLP has not discharged its onus of establishing that it has taken all reasonable measures to avoid a conflict of interest and accordingly there is a risk that the confidential information will be used to the prejudice of the applicants. In the result I am not persuaded that a

reasonably informed person would be satisfied that no use of the confidential information would occur, and accordingly there is a disqualifying conflict of interest in this case.

20. Levitt LLP argues that the applicants never communicated their objections to Levitt LLP despite their opportunities to do so. In this respect, they note that the applicants sent their letters dated October 25 and December 6, 2011, complaining of the situation to the Board but failed to copy the responding party or Levitt LLP. This was in contravention of the Board's Rules of Procedure which require all correspondence to the Board to be copied to the other parties. Levitt LLP also notes that the Board failed to alert the responding party to the applicants' concerns. In these circumstances, Levitt LLP argues, the applicants and the Board are "estopped from raising these objections at this late date having lulled the respondent into a justifiable sense of assurance that they could continue with their existing legal representation".

21. There is no merit whatsoever to this submission. The potential conflict of interest was manifest the moment Levitt LLP hired the applicants' former counsel, Ms. Sheikh. The obligation was upon Levitt LLP, in a timely way, to obtain either the consent of the applicants to Levitt LLP's continued representation of the responding party or seek a determination by this Board. It did neither. Having failed to do so, it cannot complain when the issue is addressed at the first hearing day following its employment of Ms. Sheikh.

22. Levitt LLP argues that the responding party will be prejudiced by having to incur unrecoverable costs and time in briefing new counsel.

23. Clearly the responding party will be put to some costs in briefing new counsel. However, notwithstanding the long passage of time since the filing of this application, the hearing on the merits has not commenced. The prejudice to the responding party, particularly at this stage of the proceeding, is outweighed by the presumptive prejudice to the applicants from the conflict of interest which arises from Levitt LLP continuing to act for the responding party.

24. In support of its argument that it should not be removed for conflict of interest, Levitt LLP states:

> The Board has proposed that it will case manage this proceeding. If it does so and forces the respondent to obtain new counsel, the respondent will be required to incur a substantial expenditure of time and resources to locate and instruct suitable alternative counsel.

25. This submission lacks any logic. Any "additional expenditure of time and resources" as a result of the file being case managed will be incurred whether or not Levitt LLP continues to act for the responding party. The need for case management arises not from the conflict of interest but from the manner in which the litigation has been conducted to date.

26. For all of the foregoing reasons, Levitt LLP is removed as counsel of record for the responding party.

Case Management

27. The need for express case management of this file is largely a product of three things. First, this application was filed almost two years ago, on June 30, 2010. Scheduling of hearing dates in this matter has been complicated due to the non availability of either the applicants or representatives or witnesses of the responding party. The most recent example of this is a letter dated April 18, 2012 from

the responding party indicating that its two principal witnesses will be out of the country for the first and the second half of the month of June respectively. It is time for this application to become a priority for the parties.

28. Second on the first day of hearing held on April 21, 2011 a three member panel of the Board, which I chaired, addressed certain preliminary issues. Some of those issues resulted in an agreement of the parties, which was recorded in a decision dated April 26, 2011. That agreement followed an oral decision given on April 21, 2011 which addressed certain other issues raised by the parties. It is useful to set out the substance of that oral decision here, in part for the benefit of anyone the responding party may retain to represent them in the future with respect to this matter.

> The applicants in this proceeding were non-owner taxi drivers of taxis operated under the banner of Oakville United Taxi Ltd. The applicants allege that they were prevented from continuing or resuming driving taxis under that banner by decision of the executive committee of Oakville United Taxi.
>
> Oakville United Taxi seeks leave to amend its pleadings to raise the issue of the employment status of the applicants in order to argue that the Board has no jurisdiction to hear this complaint.
>
> Oakville United Taxi argues that this position is not inconsistent with the response which it originally filed. We do not agree. That response quite clearly accepted that the applicants were employees of the responding party.
>
> The issue remains, however, whether there is prejudice to the applicants in permitting Oakville United Taxi to amend its response at this time to plead that the applicants are not its employees, in part because, it asserts, it exercises no control over the applicants. We note that the central issue in the application itself is whether or not Oakville United Taxi exercised control over the applicants by refusing to permit them to continue to drive under the Oakville Taxi banner. In these circumstances, and having regard to the stage of the proceedings, we do not think permitting the responding party to amend its pleadings at this time prejudices the applicants.
>
> Accordingly, we will permit the responding party to amend its pleadings, as described further below.
>
> Given the overlap between the issues raised by the jurisdictional issue raised by Oakville United Taxi and the application we do not consider it efficient to hear the evidence with respect to the jurisdictional issue separately.
>
> The responding party's pleadings in this case are inadequate. They are not responsive to the allegations made in the application. They do not, for example, address whether individuals named in the application had the roles ascribed to them by the application. They do not specifically address whether the conversations alleged by the applicants took place and, if these or different material conversations took place, do not address what was said during those conversations. The efficient conduct of the hearing requires that Oakville United Taxi specifically address these and other issues raised by the application: a blanket denial does not suffice.

> The responding party's pleadings, even as amended April 20, 2011, also fail to contain the facts set out in the responding party's letter of April 13, 2011.
>
> The responding party, therefore, is directed to file full, revised pleadings within two weeks of today's date.
>
> Finally, while it is open to the responding party to plead and argue that the applicants are not its employees, we would be remiss if we did not point out that this is not a new issue for the Board. While each case of course turns upon its own facts, the Board has found that taxi brokerages are the employer of drivers of cars owned by others in the past, most recently in *Hamilton Cab Co. (c.o.b. Hamilton Cab)* [2011] O.L.R.D. No. 507.

Notwithstanding the directions given orally on April 21, 2011 and in writing on April 26, 2011, this matter has languished.

29. Third, the responses filed on behalf of the responding party estimated that 20 days would be required to complete the whole case and indicated that the responding party intended to call 1 major witness and 50 minor witnesses. This approach to the litigation of this matter lacks any sense of proportion and is quite out of keeping with the amount of time that has been required to litigate similar issues in other cases. The Board will not permit its resources to be used in this way.

30. The Registrar is directed to schedule further hearing dates with the agreement of the parties if possible, but without the agreement of the parties if necessary in order to ensure that this matter can be completed without further undue delay. Given the April 18, 2012 letter from the responding party and in order to permit the responding party to obtain a new representative, should it choose, the next hearing day is not to be scheduled prior to July 1, 2012. The parties should come to the next hearing date prepared to set further continuation dates at the hearing. In this respect the parties should note again that if they are unable to agree upon dates within reasonable proximity to the next hearing date, the Registrar will be directed to schedule dates without regard to their availability.

31. Prior to the hearing the parties are directed to advise each other and this Board of any other preliminary issues which they intend to raise. The parties should come to the hearing prepared to argue all such preliminary issues. In addition, the responding party, which bears the onus, should come to the hearing prepared to call its main witnesses and to advise the Board of the identity of all its other proposed witnesses and the evidence which it anticipates each of those witnesses, and its main witness, will give. The parties should come prepared to make submissions with respect to expedited procedures by which the Board might receive that evidence and any evidence of the applicants in response.

32. I am seized.

3736-07-JD; 0845-10-JD; 0846-10-JD; 0848-10-JD; 0860-10-JD; 2560-10-JD; 2761-07-JD; 2979-07-JD; 3108-08-JD; 3339-08-JD The Crown in Right of Ontario as represented by the Ministry of Government Services, Applicant v. **Ontario Public Service Employees Union**, Responding Party v. The Association of Management, Administrative and Professional Crown Employees of Ontario (AMAPCEO), Intervenor; The Crown in Right of Ontario as represented by the Ministry of Government and Consumer Services, Applicant v. Ontario Public Service

Employees Union, Responding Party v. The Association of Management, Administrative and Professional Crown Employees of Ontario (AMAPCEO), Intervenor.

Delay – Jurisdictional Dispute – Practice and Procedure – AMAPCEO and the Crown asserted that ten applications should be dismissed without inquiring into the merits due to excessive delay on the part of OPSEU in grieving the assignment of work to members of the AMAPCEO bargaining unit – The Board determined a bright line test for delay in work assignment disputes: whether the grieving union has challenged the assignment within 30 days of the initial posting of the position, or of the date that the employer provides the union with notice of the creation of a new position, whichever comes first – The Board then applied this test and declined to inquire into eight of the proceedings on the basis of unreasonable delay, confirming the assignment of this work to AMAPCEO's members – The Board will consider two applications on their merits – Matters continue

BEFORE: *Lee Shouldice*, Vice-Chair.

APPEARANCES: *Robert Fredericks, Cathy Phan, Deborah-Anne Long, Robyn Pope* and *Niki Makrigeorgos* for the applicant; *Richard Blair, Gregg Gray* and *Chris Cormier* for the responding party; *Michael Mitchell, Charlene Wiseman, Christine Davies, Burke Moffat, Matthew Hill, Elissa Assayag, Jennifer Pacheco* and *Robert Harris* for the intervenor.

DECISION OF THE BOARD: June 15, 2012

I. Introduction

1. These proceedings consist of ten work assignment disputes that have been filed with the Board pursuant to section 99 of the *Labour Relations Act, 1995*, S.O. 1995, c. 1, as amended ("the Act"). There are currently 108 such work assignment disputes filed with the Board involving these parties.

2. In these ten applications the Crown in Right of Ontario (the "employer") and The Association of Management, Administrative and Professional Crown Employees of Ontario ("AMAPCEO") assert that the Board should confirm the employer's assignment of the work to a member of AMAPCEO without inquiring into the merits of the dispute. The basis for that assertion is excessive delay on the part of the Ontario Public Service Employees Union ("OPSEU") in challenging the assignment of the work.

3. Three work assignment disputes previously filed by the employer were subject to argument on this same ground before former Chair Whitaker. By way of decision dated November 2, 2009 (the "Whitaker decision") those work assignment disputes were dismissed due to excessive delay.

4. A consultation with the parties was held at the Board on Friday, February 10, 2012. Through a combination of previously filed written submissions and oral argument, the parties argued the question of delay with reference to these ten proceedings for the purpose of establishing the parameters of the application of the delay argument. On the assumption that like cases will be dealt with in a like manner, the collective expectation of the parties and the Board is that the decisions in these ten proceedings will assist the parties in assessing the strength of the delay argument in all other proceedings in which such an argument is raised. It is expected that with few exceptions what will ultimately remain will be those cases that need to be adjudicated on their merits.

II. The Positions of the Parties

(a) The Whitaker Decision

5. At the outset, it is important to set out the decision of former Chair Whitaker provided to the parties on November 2, 2009. The salient portions of that decision provide as follows:

> 5. The parties agree that the Board may, on the basis of delay, exercise a discretion to decline to inquire into applications brought pursuant to section 99 of the Act. The parties differ significantly, however, as to how this discretion should be exercised.
>
> 6. For reasons to follow, the Board concludes that it is appropriate in the particular context of the Ontario Public Service to follow the guidelines established by the parties themselves through the collective bargaining process with respect to the consequences of failing to bring these types of disputes forward for resolution in the grievance process on a timely basis.
>
> 7. The collective agreement between OPSEU and the Crown provides that grievances must be filed within thirty days of the circumstances which either would or should reasonably give rise to the grievance.
>
> 8. It is not always possible to determine on the basis of a posting only, whether a proposed work assignment should or should not be challenged. There is greater certainty however, once the position is filled and duties are actually being performed.
>
> 9. In the three matters argued today, grievances challenging the assignments were filed by OPSEU after thirty days had elapsed from the point where the positions were filled for the first time. There are no circumstances which justify or explain why these grievances were not filed within thirty days.
>
> 10. The Board declines to inquire into the assignments on their merits.

Regrettably, no reasons for this decision were issued by former Chair Whitaker before May 18, 2010, the date he was appointed a Judge of the Superior Court of Justice of Ontario. As a result of the former Chair's judicial appointment he was unable to issue reasons for the above-noted ruling (see section 55 of the *Judges Act*, R.S.C. 1985, c. J-1, as amended).

(b) The Positions of the Parties Generally

6. I set out below, in summary form, the positions taken by the parties with respect to the question of delay. I will discuss in greater detail below certain specific positions taken by the parties with respect to delay, as they apply to the particular fact situations that arise in these 10 proceedings.

7. Counsel for OPSEU focused first upon the nature and size of the Ontario Public Service. He noted that the various workplaces within which public sector workers work are very diverse. As a result, they are not "standard" or easily analogized to other sectors of Ontario's employer community. Public sector workplaces are constantly changing, reacting to the requirements of the Ontario public as

interpreted by the government of the day. Accordingly, OPSEU asserts that any rule developed by the Board to deal with the question of delay must take into account the nature of the public service workplace.

8. Counsel for OPSEU submitted that the Whitaker decision established the principle that a "bright line" test speaking to delay ought to be developed, if at all possible. The advantage of a bright line test is certainty, transparency and limited factual disputes regarding questions of delay. Counsel noted that the Whitaker decision was issued against the backdrop of a collective agreement grievance procedure that, through section 7 of the *Crown Employees Collective Bargaining Act*, S.O. 1993, c. 38, as amended, is subject to subsection 48(16) of the Act, and therefore he submitted that some discretion ought to remain for situations that fall outside of any test established by the Board.

9. OPSEU argues that the Whitaker decision in essence establishes two separate concepts. First, that before being required to grieve the bargaining agent (in these cases OPSEU, but in any given case either OPSEU or AMAPCEO) ought to have both (a) notice of the filling of the position and (b) an opportunity to observe the person or persons performing work in the new position. Counsel therefore submitted that the bright line for the purpose of delay can only be drawn after the union has been given notice that a position will be filled and an opportunity to see what tasks are actually performed by the incumbent in that position. Any other test, it was submitted, ceases to function as a bright line.

10. Counsel for OPSEU asserted that notice that the position will be filled ought to be insufficient in and of itself to start the clock running. OPSEU acknowledges that it previously may have grieved the filling of a job vacancy after it became aware of the posting, but before that position was filled with a successful candidate. It states that it ought not to be prejudiced as a result of having determined to do so. OPSEU notes that positions can be staffed before or after the vacancy is actually posted. In fact, it asserts that on certain occasions no notice has been provided. Accordingly, OPSEU argues that the bright line established by the Board ought not to require the grieving union to anticipate what will actually transpire once the job is filled. It asserts that having the clock start after both notice of the position and the actual filling of that position works best.

11. During the course of argument counsel for OPSEU highlighted two particular clauses in the OPSEU collective agreement. Articles 1.4 and 1.8 provide as follows:

> 1.4 Where the Employer establishes a new classification or creates a new position, within an existing class, the Employer shall provide the Union with a copy of the class standard and/or position description, including bargaining unit status (if applicable), at the request of the relevant MERC.
>
> 1.8 For clarity, the Employer agrees that any new positions or any new classifications of employees not excluded pursuant to Article 1.1, Article UN 1.1 and Article COR 1.1 will be placed in a bargaining unit represented by OPSEU.

The acronym "MERC" found in Article 1.4 is a reference to a "Ministry Employee Relations Committee". These committees are established in the different government ministries to facilitate labour relations dialogue between each union representing public servants and the employer.

12. Article 1.4 of the OPSEU collective agreement requires the employer to provide notice of the establishment of a new classification or a new position within an existing class at the request of the relevant MERC. Counsel for OPSEU stated that Article 1.4 is a particular creature of the public sector workplace, placed into the collective agreement because of the vast size of the workplace encompassed by

the collective agreement. Counsel argued that there is simply no way that OPSEU can be expected to know when a new position has been created in the absence of such notice. OPSEU asserted that in the absence of such notice, it simply does not know what to look for.

13. Counsel also briefly commented upon Article 1.8 of the OPSEU collective agreement. That provision, he asserted, contains language parallel to that utilized in Article 1.4. Counsel argued that it clearly requires new positions, including additions to current complement, to be placed into the OPSEU bargaining unit. I will return to Article 1.8 of the OPSEU collective agreement below.

14. In summary, OPSEU acknowledges the value of establishing a bright line standard to facilitate the determination of the merits of delay arguments. OPSEU argues that the event or events adopted by the Board as establishing that bright line must give clear guidance to the parties and reflect the application of common sense. OPSEU, therefore, asserts that the clock should not begin until after it has received both the notice of a vacant position and the opportunity to review the work performed by the individual selected to fill that position.

15. AMAPCEO takes a considerably different approach than does OPSEU. It agrees that the Whitaker decision is the starting point for the determination of the principles relating to dismissal for delay. It states that the Whitaker decision was clearly intended as a test case that would guide both the parties and the Board in resolving outstanding and future cases. It asserts that the principles established by the Whitaker decision were cast in general terms and were clearly intended to have broad application to the Ontario Public Service.

16. The Whitaker decision was based upon the language contained in the OPSEU collective agreement relating to time limits for the filing of grievances. The relevant language in the OPSEU collective agreement is located in Article 22 and provides as follows:

> 22.1 It is the intent of this Agreement to adjust as quickly as possible any complaints or differences between the parties arising from the interpretation, application, administration or alleged contravention of this Agreement, including any question as to whether a matter is arbitrable.
>
> 22.2.1 It is the mutual desire of the parties that complaints of employees be adjusted as quickly as possible and it is understood that if an employee has a complaint, the employee shall meet, where practical, and discuss it with the employee's immediate supervisor within thirty (30) days after the circumstances giving rise to the complaint have occurred or have come or ought reasonably to have come to the attention of the employee in order to give the immediate supervisor an opportunity of adjusting the complaint. …
>
> 22.13 UNION GRIEVANCE
>
> 22.13.1 Where any difference between the Employer and the Union arises from the interpretation, application, administration or alleged contravention of the Agreement, the Union shall be entitled to file a grievance at the second stage of the grievance procedure provided it does so within thirty (30) days following the occurrence or origination of the circumstances giving rise to the grievance. …
>
> 22.14 GENERAL

> 22.14.1 Where a grievance is not processed within the time allowed or has not been processed by the employee of the Union within the time prescribed it shall be deemed to have been withdrawn.
>
> 22.14.2 In Article 22, "days" shall include all days exclusive of Saturdays, Sundays and designated holidays.

17. It is submitted by AMAPCEO that the Whitaker decision establishes six principles for identifying and measuring delay in the context of jurisdictional dispute applications involving these parties. On the basis of the above-noted collective agreement provisions, AMAPCEO states that the first principle is that the deadline for OPSEU to file a grievance is 30 days from the circumstances giving rise to the grievance.

18. Next, having regard to the relevant collective agreement language, AMAPCEO asserts that the date when the "circumstances giving rise to the grievance" have materialized is to be resolved on an objective basis. That is, AMAPCEO notes that the deadline for OPSEU to file a grievance that represents an underlying jurisdictional dispute is worded objectively, being 30 days after the circumstances which give rise to the complaint have occurred or have come "or ought reasonably to have come" to the attention of OPSEU.

19. Third, AMAPCEO states that the circumstances that either would or should reasonably give rise to a work assignment grievance should not be restricted to situations where the position is filled and duties are actually being performed. It notes that the Whitaker decision does not rule out situations in which OPSEU would or should become aware of the basis for jurisdictional challenge prior to that point. AMAPCEO argues that there may be some situations where a posting in and of itself triggers the commencement of the 30 day time period. Counsel noted during argument that the posting process utilized by the employer is electronic, and is located on a single website to which all employees of the Ontario Public Service have access. AMAPCEO states that the process undertaken by the employer to fill a job posting takes considerable time and ought not to take any affected union by surprise.

20. Fourth, AMAPCEO argues that the circumstances that either would or should reasonably give rise to a grievance should include situations where the position is filled and the duties are actually being performed, irrespective of whether the job has been posted. AMAPCEO argues that at that stage OPSEU has sufficient certainty regarding the proposed work assignment that it ought to be able to determine to file a grievance within 30 days of the commencement of the work. Next, AMAPCEO asserts that where more than 30 days have elapsed since the circumstances that would or should reasonably have given rise to a grievance, it should be no defence for OPSEU to claim that it lacked subjective knowledge of the existence of the position or the nature of the duties. AMAPCEO agrees that there may be circumstances which justify or explain why a grievance was not filed within 30 days, but argues that those circumstances cannot reasonably include an absence of subjective knowledge.

21. Finally, it is argued by AMAPCEO that where more than 30 days have elapsed since the circumstances that would or should reasonably have given rise to a grievance, it ought to be no defence for OPSEU to claim that the employer, AMAPCEO or the successful incumbent were not prejudiced by the delay. It notes that the Whitaker decision does not contemplate a defence based upon absence of prejudice. Instead, it asserts that where OPSEU files a grievance more than 30 days after the circumstances that would or should reasonably have given rise to the grievance, prejudice to the incumbent and to the stability and integrity of labour relations in the OPS ought to be presumed.

22. AMAPCEO disagreed with many of the positions asserted by OPSEU. Its counsel suggested that the practical result of the approach adopted by OPSEU would be the elimination of the "bright line"

concept reflected by the Whitaker decision. He also asserted that the overall message delivered by former Chair Whitaker in that decision – that if a trade union desires to claim the work assigned to a member of the other union's member, it must act on that claim in a timely way – would be lost if the OPSEU approach were adopted.

23. In particular, counsel for AMAPCEO highlighted the argument made by OPSEU regarding Article 1.4 of its collective agreement. Counsel noted that AMAPCEO has a similar clause in its collective agreement with the employer. However, counsel argued that the existence of such a clause, and the existence of MERCs, ought not to be a factor in the Board's decision. Counsel stated that the practices of MERCs vary - some meet, and others do not; some take minutes of their meetings, and others do not. In that context, counsel argues that for OPSEU to argue that a failure by the employer to provide notice pursuant to Article 1.4 of its collective agreement ought to equate to no notice of the position effectively reduces the bright line test to nothing. Counsel noted that Article 1.4 was in effect when the Whitaker decision was issued, and that it had no identified effect on that decision at all.

24. Counsel for AMAPCEO asserted that the keys to answering the delay question are (a) the postings made by the employer, because those postings are available to all, and (b) the concept of deemed notice resulting from the actual performance of work. With respect to the latter, counsel asserted that the answer to the question of delay could not come down to "whether an OPSEU member was there" because that would establish a complete factual quagmire in most cases. He noted that there are hundreds of workplaces where there are no AMAPCEO members at work. Work is assigned to individuals in those workplaces. Counsel argued that AMAPCEO could not fairly justify a late claim to work in those workplaces on the basis that none of its members worked in that workplace. If that were to be the test, counsel submitted that there would effectively be no test.

25. Finally, counsel for AMAPCEO addressed the question of temporary positions. He noted that temporary positions are a fact of life in the Ontario Public Service, and that the employer can create temporary positions with very few limitations. Counsel asserted that short-term assignments established by the employer can last for years, and that in fact some of these 10 proceedings reflected such situations. As a result, counsel submitted that a different rule for temporary positions would make little sense. Counsel therefore urged the Board to adopt the same approach articulated above with respect to temporary work assignments.

26. The employer for the most part supports the position taken by AMAPCEO in these proceedings. Counsel for the employer also focused upon the importance of the context of the Ontario Public Service. He noted that the workplace parties are all sophisticated, and have access to sophisticated methods of communication with respect to new positions, job postings and restructuring. Counsel argued that, from a practical perspective, if a trade union has access to a detailed job posting and job description, it ought not to matter whether that union has an opportunity to view the job being performed to assess whether it has a valid claim to the work in question.

27. Counsel asserted that the vast majority of the fact patterns of jurisdictional disputes filed with the Board fall into the basic fact pattern underlying the Whitaker decision; that is, jobs are created, evaluated, posted, filled and then grieved beyond the 30 day time limit contained in the OPSEU collective agreement. In some cases, OPSEU did not file a grievance until many years after the position had first been filled by an incumbent. In many of those cases, multiple incumbents had filled the position for a long period of time before OPSEU filed its grievance. In these situations, the employer argues that OPSEU ought to have been aware of the circumstances giving rise to the grievance, and urges the Board to dismiss the applications for delay.

28. Counsel for the employer also identified two other fact patterns that arise from time to time. In one such fact pattern, a position was created, evaluated, and then filled by the first incumbent. The position, however, was not posted until some time later. In these cases, a grievance was filed by OPSEU more than 30 days after the position was filled with the first incumbent. In the other fact pattern, a position was created, evaluated and posted. The position was not filled by an incumbent for some time. In these cases, a grievance was filed by OPSEU more than 30 days after the position was posted, but before it was filled by an incumbent.

29. With respect to the former fact pattern, the employer agrees with the position taken by OPSEU that notice was not effectively given and that a delay argument in the absence of such notice ought not to be successful. With respect to the latter fact pattern identified above, the employer states that even if the position was not filled by an incumbent, OPSEU ought to have grieved within the 30 day period contained in its collective agreement. It states that in these circumstances OPSEU had sufficient knowledge of the circumstances of the work dispute to file a grievance, even in the absence of an incumbent.

30. Counsel for the employer agreed that the principles established with respect to delay ought to apply equally to temporary and permanent positions. With respect to whether prejudice ought to be a significant factor in establishing an approach to delay, counsel for the employer noted that former Chair Whitaker did expressly consider in his decision whether circumstances existed which justified or explained why the three grievances being considered had not been filed within the 30 day period. None were identified. Counsel submitted that the same result ought to be reached in the circumstances of these 10 applications. However, counsel also asserted that the Board ought not to treat the consideration of prejudice as it would in a typical grievance because of the nature of the proceeding. Here, there should be a presumption of significant prejudice to the incumbent, AMAPCEO and the employer should OPSEU have taken some time after the 30 day period to grieve the work assignment.

31. Counsel for OPSEU, in response to the submissions of AMAPCEO and the employer, asserted that it would be impossible for the Board to establish a bright line test on the basis of the approach adopted by those two parties. Counsel argued that it would be unfair to deem knowledge of the job posting in the manner suggested by opposing counsel. He asserted that to adopt the approach suggested by opposing counsel would effectively reduce the Ontario Public Service to a set of rules that would not have any practical application towards the resolution of disputes on their merits. Counsel argued that the other parties ought not to be permitted to hide behind timeliness arguments because it is important for good labour relations that the merits of the underlying dispute be determined rather than ignored.

III. The Principles Applicable to Delay

32. All three parties to these proceedings have identified a strong preference for the establishment of a bright line test in order to assist them in determining the point of time from which the union claiming the work in dispute (OPSEU, in these proceedings) ought to put the other parties on notice of its claim to work assigned to members of another trade union (AMAPCEO, in these proceedings). The parties simply cannot agree on the event or events that ought to constitute that bright line.

33. In my view, it makes sense to establish such a test if it is possible to do so having regard to all of the relevant considerations. To do so would eliminate the current uncertainty over the scope and application of the concept of delay, and would permit for the applications that ought to be heard on their merits to proceed to a consultation.

34. In the circumstances, I am of the view that the point of time from which OPSEU ought to have put the employer on notice of its claim for the work in dispute for the purpose of these proceedings (and

for the purpose of those proceedings held in abeyance pending the determination of the delay arguments in these proceedings) is to be calculated from the date of the initial posting of the position to which the work in dispute relates, or from the date that notice is given to OPSEU of the creation of a new position or new classification in accordance with Article 1.4 of the collective agreement, whichever occurs first.

35. I start my analysis from the premise that the obligation on the part of OPSEU to grieve a work assignment, and therefore to put the employer on notice of its claim for the work in dispute, can occur only once OPSEU has been provided with actual notice of the occurrence of the circumstances which give rise to the complaint (that is, the assignment of work to a member of AMAPCEO), or once the assignment of that work "ought reasonably to have come" to the attention of OPSEU. In most cases, that notice is provided to OPSEU by way of a job posting made by the employer. However, notice of the creation of a new position could also come to the attention of OPSEU by way of the employer's obligation pursuant to Article 1.4 of the collective agreement.

36. The job postings established by the employer that were filed with the Board in these proceedings contain considerable information regarding the position to be filled. Amongst other things, those postings identify the Position Title, the applicable Class or Job Code, and the Compensation Group (i.e. the bargaining agent) that will represent the individual who successfully posts for the position. A Job Specification that outlines the purpose of the position, contains a full description of the duties and responsibilities exercised by the successful candidate, and identifies the knowledge, judgment, lines of accountability and frequent contacts is also included with the job posting.

37. In my view, once OPSEU becomes aware of that information, or ought reasonably to have become aware of that information, it is in the position to commence its assessment of the role and of the determination made by the employer that (in these cases) the position is one that properly falls within the AMAPCEO bargaining unit. Once the position is posted by the employer, it is available for OPSEU to review. In these circumstances, OPSEU ought to be impressed with deemed notice of the job posting, whether it actually reviewed and considered the job posting or not, on the basis that it ought to have reasonably become aware of it. Similarly, once OPSEU has received notice of a new position in accordance with Article 1.4 of the collective agreement, whether or not it reviews or considers that information, OPSEU ought to be considered to have deemed notice of the establishment of that position.

38. I do not take issue with the observations made by OPSEU regarding the breadth of the Ontario Public Sector. I simply do not believe that the breadth of the Ontario Public Sector meaningfully hinders the efforts required to be made by OPSEU (or, in other cases, by AMAPCEO) to determine whether it ought to challenge an assignment of work made by the employer. The information required to make that assessment is not as difficult to secure or to access as was suggested during the course of argument. As noted by counsel for AMAPCEO, the job posting process in the Ontario Public Sector is and has been for some time fully electronic. Any employee in the Ontario Public Service can access all available job postings and review them. Although there may well be other means through which those job postings are made available to OPSEU, job postings are at all times available through an electronic website accessible by all employees of the Ontario Public Service. In my view, once those job postings are listed on that website, OPSEU ought to be considered to have become constructively impressed with knowledge of their existence.

39. During the course of argument counsel for OPSEU asserted that the bargaining agent ought to have both notice of the new position and an opportunity to observe the person or persons performing work in the new position before it should be required to grieve. I disagree. In my view, the opportunity to observe the successful candidate in the position is not at all that significant. The likelihood that the successful candidate will actually perform the full range of duties and responsibilities related to any given position during his or her first 30 working days in that position is very low. A successful candidate may

well spend considerable time at the outset of his or her new employment training, and the breadth of many of the positions will likely result in most of the tasks inherent in those positions not being performed during that initial 30 working day period.

40. In addition, the possibility that OPSEU will be able to observe the successful candidate in any meaningful way during the first 30 working days of his or her employment, including sitting down with that candidate and enquiring about the job, is very low. It is unclear to me why a successful candidate who is a member of AMAPCEO would spend any time explaining or discussing his or her position with any member of OPSEU during the first 30 working days of filling that position if the potential result of doing so is the loss of his or her position.

41. Finally, as noted above it is not uncommon for a position to be created, evaluated and posted well in advance of the position being filled by an incumbent. In fact, it could take many, many months before any given position is actually filled. In those circumstances, it makes very little sense to provide OPSEU with an extended opportunity to consider whether it will grieve the assignment of work. After posting, it has the information that it needs to make its assessment. Accordingly, I disagree with the assertion made by OPSEU that it is necessary for it to have an opportunity to observe the successful candidate for up to 30 working days before it decides whether it is appropriate to grieve that work assignment. For all practical purposes, the decision made by OPSEU to grieve an assignment of work by the employer to a member of AMAPCEO will almost always be made by reference to the job posting made by the employer, and the job description contained therein.

42. Counsel for OPSEU asserted during argument that because the assessment of delay in these proceedings is made subject to subsection 48(16) of the Act, some discretion ought to remain for situations that fall outside of the 30 working day time period. I agree with that assertion. I am not prepared to state, without qualification, that the prejudice to the employer, to AMAPCEO, and to the successful candidate whose assignment of work has subsequently been challenged is so extreme in all cases that an assertion made by OPSEU that the time line ought to be extended for the delivery of its grievance will always be denied.

43. However, it appears to me that the scope for such an extension is extremely narrow, because as time progresses considerable prejudice develops to the incumbent. A member of AMAPCEO who is successful in posting to an open position likely understands that OPSEU may grieve that assignment of work within 30 working days of its posting. In most cases, the successful candidate will commence work in the position after that 30 working day period, and will understand from the passage of that time that his or her posting can no longer be challenged. Should OPSEU grieve the success of that candidate after that candidate has commenced work in his or her new position, the employee will be very much prejudiced. As time passes, that prejudice grows. Whether that prejudice is enough to disallow OPSEU from grieving beyond the 30 working day period depends on the facts of each case.

44. The position I have adopted on delay is somewhat more definitive than the observation made at paragraph 8 of the Whitaker decision that "it is not always possible to determine on the basis of a posting only whether a proposed work assignment should or should not be challenged". The position I have adopted is not inconsistent with the Whitaker decision, because I agree that it is not always possible to determine on the basis of only a posting that a proposed work assignment should or should not be challenged. There is always the possibility that a proposed work assignment would not contain a listing of the duties and responsibilities of the position to be filled, or would contain such a general description of the job position that a legitimate assessment of the full duties and responsibilities of the position could not be made by the challenging union. In those circumstances, it may be possible for OPSEU, if it is the grieving union, to challenge the assignment after 30 working days, "once the position is filled and the duties are actually being performed". Alternatively, it may simply determine to grieve the work

assignment and determine the legitimacy of its grievance subsequently, once the necessary information is made available from the employer. However, having regard to the materials filed with the Board, it appears to me that for the most part the job postings do, in fact, provide OPSEU with the information it needs in order to determine whether a proposed work assignment should or should not be challenged.

45. It flows from the analysis set out above that I disagree with the assertion made by AMAPCEO that, in the absence of a posting made by the employer, the time for filing a grievance relating to a work assignment secured by a member of an opposing union ought to run from the date that the position is filled. The difficulty in those circumstances is determining exactly when it is that the complaining union knew or ought to have known of the substance of the work assignment made to a member of the other union. In those circumstances an individual simply fills an opening or new role without any formal notice. Accordingly, when the complaining union knew about the substance of that work assignment, or ought reasonably to have known of the substance of that work assignment, is entirely subjective and fact-driven. The desire of the parties to utilize a bright-line test to delineate the circumstances is undermined. It is appropriate in these circumstances to determine that the complaining union does not receive notice of the new position until the employer subsequently posts that position on-line or provides notice to OPSEU in accordance with Article 1.4 of the collective agreement.

IV. Application of the Principles to the Instant Proceedings

(a) Board File No. 2761-07-JD

46. In this proceeding OPSEU grieved that the employer inappropriately posted the position of Contract Management Coordinator in the AMAPCEO bargaining unit. The Contract Management Coordinator position is located within the Operations Division, Eastern Region, of the Ministry of the Environment.

47. The materials before the Board indicate that the Contract Management Coordinator position was created on or about March 11, 2005. The position was a temporary assignment for up to six months, with a possibility of extension. It was first posted for competition on March 18, 2005, with a closing date of April 5, 2005. OPSEU acknowledges that it became aware of the posting "at that time or shortly thereafter".

48. The position was evaluated on or about April 15, 2005, and was classified at the 16AGA level in the AMAPCEO bargaining unit. The successful candidate commenced work in the position on or about October 31, 2005. As at the date of the consultation, two other individuals were incumbents in the position.

49. The grievance challenging the assignment of the work to a member of the AMAPCEO bargaining unit was filed by OPSEU on August 29, 2005. That grievance was filed more than five months after the position was initially posted, more than four months after the 30 working day time limit contained in the collective agreement between OPSEU and the employer. There were no circumstances pleaded by OPSEU to justify or explain the late filing of its grievance relating to the Contract Management Coordinator position.

50. Having regard to the principles set out above, the Board declines to inquire into this assignment of work.

(b) Board File No. 2979-07-JD

51. In this proceeding, OPSEU grieved that the employer inappropriately posted the position of Coordinator, Hearings and Production Process in the AMAPCEO bargaining unit. The Coordinator, Hearings and Production Process position is currently located within the Social Justice Tribunal in the Ministry of the Attorney General. However, at the time that the job openings were posted, the position was located within the Landlord and Tenant Board, in the Ministry of Municipal Affairs and Housing.

52. The position of Coordinator, Hearings and Production Process was created by the employer on or about January 1, 2007. The position was classified at the 15AGA level in the AMAPCEO bargaining unit. A competition for the position was posted by the employer on January 19, 2007. The posting was for seven permanent positions located throughout Ontario. The closing date for the competition was February 2, 2007. Approximately two weeks later, on February 14, 2007, the position was disclosed to OPSEU pursuant to section 1.4 of its collective agreement with the employer.

53. Seven individuals successfully posted for the position. One commenced work on March 26, 2007. Four other commenced work in the position on April 2, 2007; a sixth commenced work on April 10, 2007, and the seventh commenced work in the position on April 16, 2007. OPSEU filed a grievance challenging the assignment of the work to members of AMAPCEO on May 7, 2007.

54. The grievance challenging the assignment of the work to members of the AMAPCEO bargaining unit was filed more than three months after the position was initially posted, and more than two months after the 30 working day time limit contained in the collective agreement between OPSEU and the employer. There were no circumstances pleaded by OPSEU to justify or explain the late filing of its grievance relating to the position of Coordinator, Hearings and Production Process.

55. Having regard to the principles set out above, the Board declines to inquire into this assignment of work.

(c) Board File No. 3736-07-JD

56. This application relates to the position of Administrative Coordinator, which is located within the Services Support Unit of the Registration and Claim Branch of the Ministry of Health and Long Term Care. OPSEU grieved that the employer wrongly posted the Administrative Coordinator position in the AMAPCEO bargaining unit.

57. The materials before the Board indicate that the Administrative Coordinator position was created on or about April 17, 2007. It was evaluated on or about May 1, 2007, and originally classified at the 14AGA level in the AMAPCEO bargaining unit.

58. The Registration and Claim Branch reorganized in or about May, 2007. OPSEU states that it was notified of that reorganization but was not provided with a job description for the Administrative Coordinator position at that time. In fact, the materials provided to OPSEU at that time make no reference to the position of Administrative Coordinator. OPSEU states that it subsequently received a job description for the Administrative Coordinator position at the end of July, 2007.

59. There have been three incumbents who have held the position. The first incumbent temporarily filled the position before it was posted, commencing on May 7, 2007. The second incumbent replaced the first individual approximately one year later on May 16, 2008. The third incumbent started in the role in July, 2008.

60. A competition for the position was posted on September 26, 2008, with a closing date of October 10, 2008. The posting was for one temporary position with an assignment of up to 12 months.

On or about December 15, 2008, the Administrative Coordinator position was reclassified to the 15AGA level in the AMAPCEO bargaining unit. On that same date the third incumbent was replaced by the individual who held the position initially.

61. The grievance challenging the assignment of work to a member of the AMAPCEO bargaining unit was filed by OPSEU on August 8, 2007, shortly after it received the job description for the position. Although that grievance was filed by OPSEU three months after the start date of the initial incumbent, and two months beyond the 30 working day time limit contained in the collective agreement between OPSEU and the employer, the position was not posted by the employer until September 26, 2008. Accordingly, OPSEU grieved the assignment of this work *before* the position was posted, and therefore did not file the grievance beyond the 30 working day time limit contained in the collective agreement.

62. Having regard to the principles set out above, the Board will inquire into this assignment of work on the merits.

(d) Board File No. 3108-08-JD

63. In this proceeding OPSEU grieved that the employer inappropriately posted the position of Senior Solutions Designer in the AMAPCEO bargaining unit. The Senior Solutions Designer position is located within the Infrastructure Technology Services, Enterprise Solutions and Service Design Office of the Ministry of Government Services.

64. The materials filed with the Board indicate that the Senior Solutions Designer position was originally created and classified on or about July 11, 2003. The position was classified at the 21ASY level within the AMAPCEO bargaining unit. There have been several competitions for the Senior Solutions Designer position since 2003. Approximately 28 individuals have worked in that position, commencing in 2004.

65. On or around March 12, 2007, a reorganization of Infrastructure Technology Services was announced. OPSEU subsequently filed a grievance on March 11, 2008. In that grievance, OPSEU states that the employer violated its collective agreement with OPSEU by posting the position of Senior Solutions Designer outside of the OPSEU bargaining unit.

66. The documentation filed with the Board establishes that OPSEU did not file its grievance with the employer regarding the Senior Solutions Designer position until many years after the position had first been posted and filled. In fact, the grievance was filed many years after the second and third job competitions for the position had been held, and the successful candidates chosen.

67. There were no circumstances pleaded by OPSEU that credibly justified or explained the late filing of its grievance relating to the Senior Solutions Designer position. OPSEU asserted that it filed its grievance in March, 2008 after becoming aware of a posting for three Senior Solutions Designers which closed in early March, 2008. It states that it had no knowledge that the position had been posted prior to that time. OPSEU acknowledged that the position appears to have been classified as early as 2003, but notes that at the time of its creation and classification, the collective agreement in force between OPSEU and the employer had no provision obliging the employer to disclose to OPSEU the creation of new positions. Once the collective agreement effective January 1, 2005 was negotiated and signed, Article 1.4 of the collective agreement created such obligation.

68. In my view, the materials before the Board establish that OPSEU ought reasonably to have known of the posting of these positions in 2003. Copies of certain postings relating to competitions for the Senior Solutions Designer position since 2003 were filed by both the employer and AMAPCEO. In

addition, WIN Employee Action Requests were filed for each of the successful candidates that reflect that a number of them were hired by the employer pursuant to job postings made in 2004 and 2005. Even in the absence of the obligation on the employer pursuant to Article 1.4 of the collective agreement, those postings were all available to OPSEU. In those circumstances, OPSEU ought reasonably to have known of the various postings and filed its grievance with the employer well before March, 2008.

69. The Board declines to inquire into this work assignment complaint.

(e) Board File No. 3339-08-JD

70. This application relates to the position of Office Coordinator, located within the Legal Services Branch, Ministry of Natural Resources. The position was created to assist in the delivery of all administrative, human resources, financial and IT systems/procedures, and to provide support and back-up to the Office Administrator.

71. The Office Coordinator position was created and evaluated by the employer in January, 2008. It was not posted at that time. However, the creation of the position was disclosed to OPSEU, pursuant to the obligations imposed on the employer pursuant to Article 1.4 of the collective agreement. OPSEU states that disclosure of the position occurred on February 12, 2008 at a MERC meeting, and that a job description was subsequently provided by the employer on March 19, 2008. The employer does not dispute those assertions.

72. An individual had filled the position on a temporary basis starting on January 2, 2008. On November 28, 2008 the position was posted, with a closing date of December 16, 2008. The individual who had previously filled the position temporarily was the successful candidate, and filled the position in dispute on a permanent basis starting April 1, 2009.

73. The grievance challenging the assignment of work to a member of the AMAPCEO bargaining unit was filed by OPSEU on March 26, 2008. Although that grievance was filed by OPSEU just short of three months after the start date of the incumbent, OPSEU only received notice of the position and a description of the job from the employer pursuant to Article 1.4 of the collective agreement on March 19, 2008. The grievance was filed with the employer less than two weeks later. Accordingly, OPSEU grieved the assignment of this work within the 30 working day time limit contained within the collective agreement.

74. Having regard to the principles set out above, the Board will inquire into this assignment of work on the merits.

(f) Board File No. 0845-10-JD

75. In this proceeding, OPSEU grieved that the employer inappropriately posted the position of Policy Advisor in the AMAPCEO bargaining unit. The Policy Advisor position is located within the Strategic Policy and Planning Branch of the Ministry of Aboriginal Affairs.

76. The materials before the Board establish that the Policy Advisor position is classified at the 18APA level in the AMAPCEO bargaining unit. The position was established by the employer and subsequently filled by its first incumbent, on a temporary assignment, on September 8, 2008.

77. On October 24, 2008 the employer posted for one permanent Policy Advisor position, with the competition (No. 12208) ending on November 7, 2008. An individual who had been acting in the position since October 1, 2008 was the successful candidate. She commenced her employment in the role

permanently on February 11, 2009. On July 22, 2009, the Policy Advisor position was subject to a second posting for two temporary positions. That competition (No. 19561) ended on August 6, 2009. One of the successful candidates had been acting in the role temporarily since July 28, 2009. He commenced his new assignment on October 15, 2009. The second successful candidate commenced his new assignment on November 2, 2009. Finally, the Policy Advisor position was subsequently posted once again on June 23, 2010, this time for two permanent positions. That competition (No. 27397) closed on July 14, 2010. One of the two previously successful candidates for the temporary position was successful in this competition, as was a second individual. They started working in the permanent positions on October 4, 2010 and September 15, 2010 respectively.

78. As noted above, the grievance challenging the assignment of work to a member of the AMAPCEO bargaining unit was filed by OPSEU on August 21, 2009. OPSEU claims that its grievance arose from the posting of the two temporary positions on July 22, 2009; that is, job competition No. 19561. OPSEU states that these two positions were posted for the first time in July, 2009, and that it only learned of the positions because of the posting.

79. The initial posting made by the employer was made on October 24, 2008, approximately 10 months earlier. Although OPSEU states that it only learned of the Policy Advisor positions in July, 2009, it is clear that a competition for an opening in the position was posted by the employer in October, 2008. That posting was available to OPSEU, and OPSEU either knew or should have known of that posting. It took no steps at that time to grieve the assignment of work. Its eventual grievance was filed with the employer well beyond the 30 working day timeframe contained in the collective agreement. There were no circumstances pleaded by OPSEU to justify or explain the late filing of its grievance.

80. The Board declines to inquire into this assignment of work.

(g) Board File No. 0846-10-JD

81. In this proceeding OPSEU grieved that the employer inappropriately posted the position of Program/Business Analyst in the AMAPCEO bargaining unit. The Program/Business Analyst position is located within the Youth Justice Operational Support Branch of the Ministry of Children and Youth Services. It is classified at the 19APA level in the AMAPCEO bargaining unit.

82. The materials filed with the Board establish that the Program/Business Analyst position was created on or around March 11, 2005 when a number of new branches of the Ministry of Children and Youth Services were established. On April 1, 2005, the position was posted for competition. That competition closed on April 15, 2005. The successful candidate commenced her employment in the position on July 4, 2005. Since the creation of the Program/Business Analyst position there have been approximately seven incumbents in that role.

83. Due to operational needs, it was determined during early 2009 that an increase in the complement of Program/Business Analysts was required. The position description for the position of Program/Business Analyst was revised on or about May 5, 2009. On June 11, 2009, the Program/Business Analyst position was posted for competition. That competition closed on June 25, 2009. An individual who had been acting in the position on a temporary assignment since September 8, 2008 was the successful candidate. She commenced her permanent employment in the position on August 4, 2009.

84. OPSEU filed the grievance referred to above on June 30, 2009, more than four years after the Program/Business Analyst position was initially posted for competition. OPSEU argues that it is nonetheless timely. It states that in May, 2009 it received disclosure from the employer which indicated

that a "new position or positions" of Program/Business Analyst would be created in the Operational Support Branch of the Ministry of Children and Youth Services. It states that at that time there were no postings for the positions indicated with the materials it received. However, rather than wait for those postings to arise or for the positions to be filled, it filed a grievance on June 30, 2009. In fact, as noted above the position was posted by the employer approximately three weeks earlier.

85. This proceeding raises for consideration the impact of Article 1.8 of the collective agreement between OPSEU and the employer on the question of delay in the context of an accretion to complement. OPSEU states that the increase to the complement of Program/Business Analysts amounts to the creation of "new positions" for the purpose of Article 1.8 of the collective agreement. Once again, Article 1.8 provides as follows:

> 1.8 For clarity, the Employer agrees that any new positions or any new classifications of employees not excluded pursuant to Article 1.1, Article UN 1.1 and Article COR 1.1 will be placed in a bargaining unit represented by OPSEU.

On the merits, OPSEU asserts that Article 1.8 requires that all new Program/Business Analyst openings be assigned to member in its bargaining unit, and that the decision made by the employer to place those positions in the AMAPCEO bargaining unit gives rise to a breach of that provision. For the purpose of the preliminary issue of delay, OPSEU states that the Program/Business Analysts hired as a result of the June, 2009 postings are "new positions" and therefore that its grievance was timely when it was filed on June 30, 2009.

86. I disagree. As acknowledged during argument, the broader position adopted by OPSEU with respect to Article 1.8 of its collective agreement is one that at its core deals with the merits of this proceeding rather than the question of unreasonable delay. With respect to the preliminary question of delay, I am of the view that there is nothing contained in Article 1.8 that establishes any different considerations than those set out above for the purpose of assessing whether OPSEU unreasonably delayed in filing this grievance.

87. For the purpose of assessing the timeliness of this grievance, the critical event is the initial creation and posting of the Program/Business Analyst position in 2005. OPSEU did not grieve the determination made by the employer at that time that employees hired to be Program/Business Analysts would be placed into the AMAPCEO bargaining unit.

88. No matter what substantive effect, if any, Article 1.8 of the collective agreement may have on the merits of the jurisdictional disputes before the Board, an addition to complement of a previously established position four years after the position was initially posted and filled cannot make timely a grievance that would otherwise be untimely. If it could, long-service incumbents in all positions in the AMAPCEO bargaining unit that have never been the subject of an OPSEU work assignment grievance – and therefore confident that their employment would not be subject to jurisdictional litigation - would be placed at risk of such a claim should the employer determine to add to the overall number of persons filling the position. Counsel for AMAPCEO argued that such a result would be "completely, utterly absurd". I agree. At the very least, to reach a result that would permit for that type of collateral attack on long-service employees creates unstable labour relations for all of these parties, and ought to be avoided.

89. Here, the grievance filed with respect to the Program/Business Analyst position was filed many years after the creation of that position, well beyond the 30 working day time limit contained in the collective agreement. No circumstances were pleaded by OPSEU to justify or explain that long delay.

90. In the circumstances, the Board declines to inquire into this assignment of work.

(h) Board File No. 0848-10-JD

91. This proceeding relates to the position of Project Manager. The Project Manager position is located within the Customer Solutions Delivery Branch, Central Agencies Cluster, at the Ministry of Revenue. The materials filed with the Board establish that the Project Manager position was created on or around December 4, 2008 and classified at the 21ASY level in the AMAPCEO bargaining unit. The employer states that the Project Manager position, though new to the Customer Solutions Delivery Branch, had previously existed in other divisions and branches of the Ministry.

92. The Project Manager position was posted for six permanent positions on February 25, 2009. That competition closed on March 11, 2009. There were five successful candidates. In order to find a sixth incumbent, the employer once again posted the Project Manager position on July 15, 2009, advertising for one permanent position. That competition closed on July 29, 2009. A successful candidate was identified.

93. Since the creation of the Project Manager position in December, 2008, there have been nine incumbents who have held the position – the six individuals who were initially successful (and who started in their roles between June 1, 2009 and October 19, 2009), and three others. The latter three started in that role, two during February, 2010, and the third during June, 2011.

94. The grievance challenging the assignment of work to members of the AMAPCEO bargaining unit was filed by OPSEU on August 10, 2009. The grievance makes reference to a violation of Article 1.8 of the collective agreement and the "newly created positions of Project Managers in the Customer Solutions Delivery Branch in the OPSEU bargaining unit". Notwithstanding that the grievance was filed more than five months after the initial posting of the Project Manager position, OPSEU asserts in its materials that its grievance was filed "within the timeframe contemplated by the collective agreement".

95. OPSEU raises a number of arguments in defence of its position. First, OPSEU states that it did not receive notice of the position through disclosure under Article 1.4 of its collective agreement with the employer. However, it does acknowledge becoming aware of the position by virtue of the posting on February 25, 2009. Accordingly, it was aware of that the vacancies in the position were being filled by the employer many months before it filed its grievance on August 10, 2009.

96. OPSEU also asserts that if one has reference to the actual start dates of the successful candidates, only three started their employment in the Project Manager role beyond the 30 working day time limit contained the collective agreement. Furthermore, OPSEU notes that the managerial approvals for some of the successful candidates were made significantly later than the effective dates of employment for those same candidates. OPSEU characterizes its delay as reflecting "a matter of days" and asserts that no significant prejudice would arise if the matter were determined on the merits.

97. I disagree. The suggestion that only some of the successful candidates started their employment beyond the 30 working day time limit contained in the collective agreement is similar in some respects to the increase in complement argument dismissed in Board File No. 0846-10-JD, above. For the reasons set out above, it is my view that OPSEU cannot make what would otherwise be an untimely grievance timely for the sole reason that its grievance was filed within 30 working days of the date that the most recent successful candidate started his or her employment in the position. The challenge made by OPSEU relates to the Project Manager position, and not the individual incumbents in that position.

98. The argument made by OPSEU that the date of managerial approval for the successful candidates ought to affect the question of timeliness is inconsistent with its argument that a bright line test be adopted for the determination of delay issues. There are few acts more arbitrary than the date chosen by a manager to complete what by any definition is an administrative task with acknowledged retroactive effect. The date that a manager signs such a hiring form for any individual candidate should have no bearing at all on the question of delay.

99. OPSEU made one argument that had some initial attractiveness. It argued that the basis for its grievance in July, 2009 was its belief that the work performed in the Project Manager position was more appropriately placed in its bargaining unit at the Systems Officer 7 level. This latter classification was not introduced into the OPSEU bargaining unit until the most recent collective agreement, which only became effective as at the date of ratification, after the initial posting date of February 25, 2009. It asserts that it subsequently grieved in a timely fashion when it became aware of the posting for one Project Manager in July, 2009. The attractiveness of this argument is premised upon the assumption that it is unreasonable to expect OPSEU to have anticipated that it might have a subsequent jurisdictional argument in the future, and therefore to grieve that potential claim in February, 2009, in advance of actually having a complaint.

100. The argument loses its attractiveness when the facts are considered more closely. Subject to ratification, the Memorandum of Settlement that resulted in the collective agreement establishing the Systems Officer 7 classification was achieved on December 23, 2008. The Memorandum of Settlement appears to provide that the Systems Officer 7 classification was established effective on the latest date of ratification. The latest date upon which one of the parties ratified the collective agreement was February 26, 2009, the day immediately after the posting of the six permanent openings in the Project Manager position. Accordingly, the Systems Officer 7 classification was actively in play on February 26, 2009, when the six Project Manager openings had just been posted.

101. In these circumstances OPSEU ought to have grieved the posting of the Project Manager openings within 30 working days of the posting on February 25, 2009. Although the establishment of the Systems Officer 7 classification did not occur until the collective agreement was ratified the day after the posting, OPSEU knew from December 23, 2008 that the Systems Officer 7 classification would almost certainly become a new classification in its collective agreement. Accordingly, when the posting was made by the employer OPSEU should have realized it had a potential claim for that work, and when ratification did occur OPSEU ought to have grieved the decision made by the employer to assign the work to Project Managers in the AMAPCEO bargaining unit. The posting of the position was ongoing on that date, and the key event that triggered the need for a grievance, namely the assignment of the work in dispute to members of AMAPCEO, was well off into the future.

102. The competition for the Project Manager openings was posted on February 25, 2009. OPSEU acknowledges that it became aware of the posting at that time. If OPSEU had grieved the assignment of work to members of the AMAPCEO unit within the 30 working day timeframe contained in its collective agreement with the employer, the successful candidates for the role would have become aware of that challenge before they had accepted the position. They may have acted upon that knowledge and made different decisions, or they may not have, we do not know. However, OPSEU did not grieve. The successful individuals are now subject to a claim by OPSEU that could alter their employment quite significantly. That is meaningful prejudice. In fact, that is the exact type of prejudice that the 30 working day time limit in the collective agreement is intended to avoid.

103. OPSEU ought to have grieved the assignment of the Project Manager position to members of the AMAPCEO bargaining unit many months before it did. It did not do so, and it has no legitimate

explanation for the delay in filing its grievance. Having regard to the principles and analysis set out above, the Board declines to inquire into this assignment of work.

(i) Board File No. 0860-10-JD

104. In this proceeding OPSEU grieved that the employer inappropriately posted the position of Senior Policy Advisor in the AMAPCEO bargaining unit. The Senior Policy Advisor position is located within the Integrated Environmental Policy Division of the Air Policy Instruments and Program Design Branch of the Ministry of the Environment.

105. The materials filed with the Board indicate that a Senior Policy Advisor position was first created in early 1999 in the Air Policy and Climate Change Branch of the Ministry (the "APCC Branch"). The Senior Policy Advisor position has been filled since September 3, 1999.

106. On July 18, 2008, one permanent opening as a Senior Policy Advisor was posted. That competition closed on August 1, 2008. The successful candidate commenced his employment in that role on October 6, 2008. On August 15, 2008, the Senior Policy Advisor position was posted again, for four permanent positions within the APCC Branch. That competition closed on August 29, 2008. Three of the four successful candidates began their employment in that role on November 3, 2008. The fourth began her employment in that role on December 1, 2008.

107. In 2009, a new branch of the Ministry, the Air Policy Instruments and Program Design Branch (the "APIPD Branch") was established. At that time, it was determined to move the Senior Policy Advisors from the APCC Branch to the APIPD Branch of the Ministry.

108. On July 21, 2009, the Senior Policy Advisor position was posted for one permanent position within the APIPD Branch. That competition closed on August 5, 2009. A successful candidate was identified, who commenced his employment in that role on October 26, 2009. On August 27, 2009, the Senior Policy Advisor position was once again posted, for one permanent and one temporary position. That competition closed on September 11, 2009. The two successful candidates started their employment in the roles on December 21, 2009 and January 11, 2010, respectively.

109. OPSEU has filed two grievances relating to these positions – one dated August 11, 2009 and one dated September 14, 2009. Although not identical, the substance of the grievances are the same, namely that the employer violated its collective agreement with OPSEU by not including the newly-created position of Senior Policy Advisor, APIPD Branch, in the OPSEU bargaining unit.

110. The employer asserts that the Senior Policy Advisor position has been in existence and filled since 1999. It asserts that there can be no legitimate explanation or justification offered by OPSEU for the nine year delay in filing a grievance regarding that position. AMAPCEO agrees, and points out that even if one goes back only to 2008 when the employer posted for numerous positions and assigned the work to members of its bargaining unit, the grievance was filed by OPSEU well beyond the 30 working day time limit contained in its collective agreement with the employer.

111. OPSEU takes the same position that it took in Board File No. 0846-10-JD immediately above. OPSEU argues that it became aware of the new positions posted in July, 2009 and August, 2009 solely by reason of the postings made by the employer. It asserts that these positions were in addition to the existing complement of Senior Policy Advisors employed in the Ministry, and relies upon Article 1.8 of its collective agreement with the employer. It states that the grievances were pursued in a timely fashion having regard to Article 22 of its collective agreement.

112. For the reasons set out above in Board File No. 0846-10-JD, I disagree with the position taken by OPSEU. The Senior Policy Advisor position was initially established, posted and filled in 1999. Many years later, further postings were made by the employer, and OPSEU made no attempt to challenge the assignment of work made by the employer. For the reasons outlined above, OPSEU cannot now grieve the assignment of work made to two new incumbents and effectively challenge, retroactively, the initial assignment of work made by the employer in 1999.

113. The grievances filed by OPSEU were made nine years after the initial posting and assignment of work made by the employer. There were no circumstances identified by OPSEU to explain or justify such a long delay in grieving. Having regard to all of the circumstances and the principles set out above, the Board declines to inquire into this assignment of work.

(j) Board File No. 2560-10-JD

114. In this proceeding, OPSEU grieved that the employer inappropriately posted the position of Mediator in the AMAPCEO bargaining unit. The Mediator position is located in the Ontario Court of Justice, Court Services Division of the Ministry of the Attorney General.

115. The materials before the Board indicate that the Mediator position was created by the employer and evaluated by it on or about November 1, 2006. It is classified at the 18PSW level in the AMAPCEO bargaining unit. The position does not appear to have been posted at that time. Since the creation of the Mediator position in 2006, there have been four incumbents that have filled the position. The position was first filled temporarily on or about April 27, 2007.

116. An open competition for the Mediator position was posted on May 2, 2008. That competition closed on May 16, 2008. A subsequent open competition for the Mediator position was posted approximately one year later on May 19, 2009. That competition closed on June 3, 2009. There was one successful candidate.

117. The grievance challenging the assignment of work to a member of the AMAPCEO bargaining unit was filed by OPSEU on August 25, 2009. That grievance was filed approximately 16 months after the position was initially posted in May, 2008, and just less than three months after the position was subsequently posted in May, 2009.

118. OPSEU asserts that it first became aware of the increased complement of Mediators in May, 2009. It filed its grievance on August 25, 2009, prior to the position being staffed. It reiterates its argument based upon Article 1.8 of the collective agreement, asserting that the position appears to be a "new position" within the meaning of that provision. It asserts that it was not out of time when it filed its grievance, before the position was staffed, on August 25, 2009.

119. For the reasons set out above, I disagree. OPSEU ought to have filed its grievance regarding the Mediator position when the position was first posted in May, 2008. It did not do so, and it has provided no explanation or justification for the delay in filing its grievance. In all of the circumstances, the Board also declines to inquire into this assignment of work.

V. The Result

120. For the reasons set out above, the Board will consider two of these proceedings (Board File No. 3736-07-JD and Board File No. 3339-08-JD) on their merits. The Board declines to inquire into the remaining eight proceedings on the basis of unreasonable delay. In the latter eight proceedings, the assignment of work to one or more members of the AMAPCEO bargaining unit is effectively confirmed.

VI. Next Steps

121. Counsel for the employer is directed to consult with counsel for OPSEU and AMAPCEO regarding the status of the various proceedings that are subject to a preliminary argument relating to delay. The principles set out above are to be applied to those proceedings, and the parties are to identify to the Board, through counsel for the applicant (a) those proceedings that the parties agree will not proceed to consultation on the merits due to delay, and (b) those proceedings that the parties agree will proceed to consultation on the merits. If there are any proceedings in which the application of the principles set out in this decision does not adequately resolve the question of delay, the parties are to identify those proceedings to the Board. I will determine the delay issue in those proceedings on the basis of further written submissions from the parties.

122. Once the parties have identified those proceedings to be determined on their merits by way of consultation, the Board's Acting Manager of Field Services will contact them for the purpose of establishing a consultation protocol. It appears to me that the remaining proceedings can be determined on their merits in the same fashion as the preliminary delay issue; that is, a representative selection of applications will be chosen, written submissions on each of those applications will be filed (to the extent that they have not been filed to date), and one date of consultation to hear the submissions of counsel will be scheduled. I am open to other recommendations from counsel.

123. Should one or more of the parties consider it necessary to deal with an outstanding issue relating to delay or the scheduling of the remaining proceedings before a panel of the Board, I can be reached through the Office of the Registrar and will convene a conference call hearing and/or consultation.

2048-11-ES Timothy Leys and Kristen Thesberg, Applicants v. Agripina Likhanga and Director of Employment Standards, Responding Parties.

Employment Standards – The applicants sought review of an order to pay wages issued against them on behalf of a live-in caregiver – The Board took the opportunity to reflect on the provisions of the *Employment Standards Act* and in particular the regulation that entitles an employee to payment for holding himself or herself ready for call to work: when no work has been assigned but an employee is not free to leave the workplace or pursue personal endeavours, that employee is working for purposes of the Act, even in the absence of any productivity or benefit for the employer – The Board found the caregiver in this case was entitled to an even greater amount of wages than calculated by the employment standards officer – Order amended upward; application for review dismissed

BEFORE: *James Hayes, Vice*-Chair

APPEARANCES: *Timothy Leys* and *Kristen Thesberg* appeared on behalf of the applicant; *Rathika Vasavithasan, Meagan Johnston* appeared on behalf of the employee responding party; no one appeared for the Director of Employment Standards.

DECISION OF THE BOARD: May 29, 2012

1. This is an application for review pursuant to section 116 of the *Employment Standards Act, 2000*, S.O. 2000, c.41, as amended (the "Act").

2. The applicants, Timothy Leys and Kristen Thesberg (collectively, the "Applicants"), dispute an Order to Pay issued by an Employment Standards Officer who found numerous contraventions of the Act in relation to the employment of the respondent, Agripina Likhanga (the "Respondent"), as the Applicants' live-in caregiver.

3. Specifically, the Employment Standards Officer issued an Order to Pay for $7,706.13 inclusive of the 10% statutory administrative fee, comprised of the following amounts:

- $1,804.00 in unpaid wages;
- $497.82 in unauthorized deductions;
- $1,514.43 in overtime;
- $1,379.70 in public holiday pay;
- $1,703.54 in vacation pay;
- $106.08 in termination pay; and
- $700.56 in administrative costs.

4. A hearing was held on April 30, 2012. Testimony was given by both applicants and the Respondent, and numerous exhibits were filed on consent. The Applicants were self-represented. The Respondent was represented by Rathika Vasavithasan, an articling student with Parkdale Community Legal Services Inc. To avoid the case being held over to a second day, written argument was submitted by both parties.

5. Based on my findings of fact and the reasons that follow, I find that the Respondent is entitled to recovery beyond that ordered by the Employment Standards Officer.

The Facts

6. The Applicants employed the Respondent as a live-in caregiver from September 6, 2009 until her termination on April 14, 2011 (though, as noted below, the Respondent's start date is disputed). The Applicants have two young children. In light of their active lifestyles, the Applicants decided to hire a live-in caregiver to assist with household chores, cleaning, and caring for their children. To this end, the Applicants began construction of a furnished 'nanny suite' in the basement of their home.

7. The Respondent is a Sri Lankan national who arrived in Canada pursuant to the federal government's Foreign Worker Program. The Applicants testified that when they first met the Respondent in June 2009, she was "living on the couch" of a cleaning client and obligated to a monthly agency fee from "Nannies 4 U". The Applicants explained that they had been sympathetic to the Respondent's plight. Accordingly, they hired the Respondent and expedited work on the nanny suite. The Respondent began living with the Applicants in July 2009, although because their children were away at camp during the summer, she did not "officially" start work until September 6, 2009.

8. On July 28, 2009, the Respondent signed an employment contract which, among other things, stipulated a 40 hour work week, wages of $400.00 per week (minus room and board), and two weeks vacation per year. The duration of the contract was two years from that date, subject to notice of

termination. This was all confirmed in the federal government's Labour Market Opinion. In the contract, the Respondent's job duties were described as:

> Walk children to and from school, help with homework, play age appropriate games, supervise children, ensure safety, etc. … Laundry, light housekeeping, meal preparation.

9. Notably, even though the parties had allegedly agreed to a start date of September 6, 2009, this is not reflected in the Respondent's employment contract. The Respondent testified that she began performing light duties for the Applicants in June 2009, even though her work permit was not received until September 2009.

10. Also not reflected in the employment contract is the parties' alleged understanding that the Respondent would work a "reduced" work week of 15 hours per week during the occasions that the Applicants and their children were out of town. This was said to occur six or seven weeks per year. The Applicants testified that these trips typically consisted of summer stays at their cottage, skiing in the winter, and vacations out of the country. The Applicants' position was that because the Respondent's $400.00 per week salary did not change during these "reduced" work weeks, there was, in effect, an averaging agreement of sorts between the parties.

11. The Applicants testified that a sample schedule was used for hiring purposes, but was not adhered to as it became apparent that the Respondent lacked cooking and driving among other skills. The sample schedule contemplated a 48.5 hour work week, comprised of 10-hour days Monday to Thursday (8 a.m. to 6 p.m.), and an 8.5 hour day on Friday (8 a.m. to 4:30 p.m.). Instead, the Applicants prepared a cue-card schedule of tasks the Respondent was to perform each day. Considerable evidence was led on the exact time it should have taken to perform each task, with the Applicants contending that the Respondent should not have needed to work more than 38 hours in a regular work week. Further, the Applicants insisted that the Respondent received every statutory holiday off, and took two weeks vacation each year.

12. In contrast, the Respondent claimed she worked at least 12-13 hours per day. This claim was based on her contention that her day had to start at 6:00 a.m. in order to supervise the children when the Applicants left for the gym, and did not finish until at least 7:00 p.m. in light of the task load assigned to her. The Respondent also claimed that she invariably had to work weekends as well, either as a result of cleaning up after the Applicants' casual entertaining on Friday nights, or because of overflow tasks that were not completed during the week. Further, the Respondent insisted that she worked every statutory holiday, and was never able to take her two weeks of vacation. Also complicating matters was that the Respondent claimed to have been left with a litany of onerous tasks while the family was away that were impossible to complete within a 15-hour "reduced" work week. Even when this did not occur, the Respondent alleged that work still had to be performed because she was left with responsibility for the family dog and cat.

13. To put it charitably, the parties were some distance apart in terms of their perception of the factual matters in dispute.

Relevant Law

14. Before delving into further facts and details, it is important to appreciate the law which ultimately governs this matter. It would certainly be desirable if employers, and certainly employers of live-in caregivers, were aware of the legislated provisions which set out when work is deemed to have been performed. Whether or not these applicants might disagree with the public policy choices reflected in the legislation, it is that legislation which the Board is required to apply. S. 6 of O. Reg. 285/01 states:

> **6.** (1) Subject to subsection (2), work shall be deemed to be performed by an employee for the employer,
>
> - (a) where work is,
>
>   (i) permitted or suffered to be done by the employer, or
>
>   (ii) in fact performed by an employee although a term of the contract of employment expressly forbids or limits hours of work or requires the employer to authorize hours of work in advance;
>
> - (b) where the employee is not performing work and is required to remain at the place of employment,
>
>   (i) waiting or holding himself or herself ready for call to work, or
>
>   (ii) on a rest or break-time other than an eating period. O. Reg. 285/01, s. 6 (1).

The Regulation also goes on to provide when work is deemed *not* to have been performed:

> **6.** (2) Work shall not be deemed to be performed for an employer during the time the employee,
>
> - (a) is entitled to,
>
>   (i) take time off work for an eating period,
>
>   (ii) take at least six hours or such longer period as is established by contract, custom or practice for sleeping and the employer furnishes sleeping facilities, or
>
>   (iii) take time off work in order to engage in the employee's own private affairs or pursuits as is established by contract, custom or practice;
>
> - (b) is not at the place of employment and is waiting or holding himself or herself ready for call to work. O. Reg. 285/01, s. 6 (2).

15. Employers may be surprised to learn that their employees may be working within the meaning of the Act when there is actually no product of their labour. It is important however to understand why this is the case. Wages do not guarantee purchase of an actual service or product from an employee. Rather, wages purchase an employee's time during which productivity may be expected. This may be explicit, as in workplaces with settled work schedules, 9:00 a.m. to 5:00 p.m. for example, or it may be implicit, such as when the amount of work assigned indicates a need to perform overtime. Complications arise, however, when there is incongruity between the employer's expectation about the time required to complete a set of tasks and the employee's individual ability to do so. In light of its broad remedial purpose, however, the Act's provisions favour the employee in such circumstances. Further, even when no work has been assigned but an employee is not free to leave the workplace and pursue personal endeavours without regard for his or her employer's interest, generally speaking, that employee is "working" for the purposes of the Act, even in the absence of any productivity or benefit for the employer.

16. While they are not binding on the Board, the following passages from the Ministry of Labour's *Employment Standards Act, 2000*: Policy and Interpretation Manual describe the issue well:

> "Section 6(1)(a)(i) states that work is deemed to be performed where work is done and the employer has permitted or suffered the work to be done. The purpose is to indicate that it is not necessary that the

> employer have explicitly agreed to or approved of the employee doing the work. The employer is considered to have permitted work to be done where it fails actively to prevent the employee from performing work. …
>
> Section 6(1)(a)(ii)…establishes that work is deemed to be performed when it is in fact performed, *even though* the employment contract prohibited the performance of the work or the contract required the employee to obtain approval of the employer to perform the work and such approval was not obtained. …
>
> For example, work was deemed to be performed where the employee's actual hours of work exceeded those for which the employee was scheduled (*Re Weiche-Huttenkofer Corp. Ltd.*), and where the employee performed work that was not authorized in advance as required by the employer (*Re 469754 Ontario Ltd.*). The fact that the work performed by the employee was unnecessary (i.e., it was not required to be done) does not render s. 6(1) inapplicable (see *Re Keyes Supply Co. Ltd.*); nor does the fact that the work was unsatisfactory (see *Re Living Institute* and *Re Elgin Lumber & Packaging Corp. Ltd.*)."
>
> Section 6(1)(b)(i) establishes that work is deemed to be performed where an employee is not in fact performing work but is *required* to be *at* the place of employment waiting to be called to work.
>
> Section 6(1)(b)(ii) establishes that work is deemed to be performed where an employee is not in fact performing work but is *required to be* at *the place of employment* on a break or rest period other than an eating period.
>
> If the employee is allowed to leave or is required to leave the place of employment during a break, work will not be deemed to be performed."

17. With these principles in mind, a review of the evidence and parties' positions may now follow.

Evidence

18. The Applicants filed voluminous evidence seeking to identify precisely what tasks the Respondent performed, and when she performed them. The Applicants hold the view that the Respondent ought only to be compensated for work actually performed, in the time it should have taken her to perform it. The Applicants also submitted many cell phone bills for the stated purpose of identifying instances when the Respondent was not working.

19. As should now be clear, the legislation does not contemplate a docketing method for wage calculation. That said, the documents submitted do paint a compelling picture of the employment environment in question. For example, having regard to a family medical circumstance, and in addition to typical caregiver and cleaning duties, the various task lists also required the Respondent to perform work which included wiping down all walls/shelves/drawers/furniture, cleaning and vacuuming air vents, washing out the fireplace, and so forth.

20. Based on my perception of the documents they produced, and the submissions they filed, I conclude that the Applicants run a highly efficient, meticulously organized family. Based on their description of the Respondent, it also appears that she may not have been able to keep up with the active pace they keep or to meet their expectations. It also appears that the Applicants harbour a sense of

resentment about the Respondent's employment standards claim given all the support which they believe they have given her. While none of this is offered as a finding of fact, it is the contextual backdrop against which I considered material evidentiary disputes.

Decision

a) Regular Work Week

21. The Applicants' position is that the Respondent was paid all of her required wages, and more, during her 20 month period of employment. The Respondent, however, submits that she typically worked a full 44-hour work week and incurred additional overtime as well (discussed further below). The Employment Standards Officer used the employment contract's 40 hour work week as a base, and then assessed an additional 4 hours per week to arrive at the original Order to Pay.

22. There was conflicting testimony as to when, exactly, the Respondent's normal day began. The Respondent was emphatic that she rose at 6:00 a.m. every day to look after the children while the Applicants went to the gym. The Applicants, on the other hand, contended that the Respondent did not appear from her basement apartment until 8.00 a.m. Further, in the course of their final reply written argument, it was submitted for the first time that the Applicants only went to the gym 2-3 times per week and, even then, alternated their time of departure in order to ensure that their children were supervised at all times by themselves.

23. With respect, I did not find either party particularly convincing with respect to the details. However, I am prepared to find that the Respondent supervised the children some mornings, and that the Applicants organized their schedules in order to do the same as well. This makes sense in light of the Applicants' highly active lifestyles, the Respondent's primary role as caregiver, and the mutual reliance each party placed upon the other. For this reason, I have assessed the Respondent's hours of work as if she started at 7:00 a.m. each day. This is not far from the Applicants' own documentary evidence which indicated an ideal 7:30 a.m. start time in order to help their children get ready for school.

24. There was further dispute over when the Respondent's day would typically end. Although considerable evidence was led on the time needed to complete each assigned task, I do not think it is necessary to consider these submissions for two reasons. First, the Respondent demonstrated questionable credibility when pressed on when her day would finish, and second, the "deemed work" provisions noted above render the point moot. That is, the present exercise does not involve adding up instances of productivity (akin to docketing), but rather examines the period in which the Respondent was deemed by the legislation to have worked. For this reason, the family's typical dinner time appears to be a more consistent and credible gauge for when the Respondent's day typically finished. In light of the various evening activities, it appears that the family ate dinner between 5:30 p.m. and 6:00 p.m. Allowing time for clean up, I find that for the purposes of calculating hours of work, the Respondent's day finished at 6:30 p.m. Monday to Thursday. Because all parties agreed that the Respondent's work day was shortest on Fridays, I find that she finished that day at 5:30 p.m.

25. Based on the foregoing, for the purpose of calculating wages (both regular and overtime), I find that the Respondent worked 56.5 hours on unreduced work weeks. This consists of 11.5 hours Monday to Thursday, and 10.5 hours on Friday.

26. In terms of the "reduced" 15-hour work week alleged to offset excess hours worked during the rest of the year, I note that the Applicants have not produced any written agreement to this effect. The Act strictly requires that any averaging agreement, or agreement for time off in lieu, be in writing. See subsections 1(3), 15(9), 22(2), and 22(7) of the Act.

27. Because no written agreement exists, I cannot give effect to the purported "reduced" work week. However, because the Respondent is a caregiver, it is implausible to suppose that she worked the same excess hours while the Applicants were away than while they were at home. Consequently, for the periods of time the Applicants were out of town, I find that the Respondent is entitled to be paid 40 hours per week, as stipulated in her employment contract.

b) Overtime on Evenings and Weekends

28. The Act provides that overtime is owed at a rate of time and a half for each hour worked past 44 hours per week. Having already found that the Respondent is entitled to overtime pay for the excess 12.5 hours worked Monday to Friday, the issue of work on evenings and weekends must now be considered.

29. Based on the Applicants' own evidence, it is clear that the Respondent was required to work on some evenings in excess of her standard work week. What is more difficult for present purposes, however, is to determine how often that occurred. Because of the limitation period in s. 111 of the Act, the Respondent may only recover wages owing from June 2010 onwards (12 months before her claim was filed). Based on the limited samples of schedules put before me, it is indisputable that the Respondent was required to look after the Applicants' daughter for an hour on Monday nights in January and February of 2011. This amounts to 13.5 hours of weekly overtime for the weeks of January 3 to February 21, 2011. Unfortunately the remaining samples of schedules are inconclusive as to overtime required in the evenings, and I decline to draw any inferences for other times based on this admitted overtime in January and February, 2011.

30. With respect to weekends, the Applicants suggested that the Respondent volunteered to take care of the family dog and cat when they were away. Simply put, it is unacceptable in these circumstances to characterize pet care as something that constitutes voluntary rather than actual work. First, the Respondent and persons similarly situated are particularly vulnerable given their reliance upon Canadian work permits. Any suggestion of voluntary work should be met with the highest degree of scrutiny by the Board. Second, apart from cleaning and house chores which may or may not have been required on any given weekend, it is indisputable that at certain times the Respondent was required to look after the Applicants' pets (i.e. during the 2011 ski season). The jurisprudence does not recognize the concept of *de minimus* work; rather, pursuant to s. 6 of O. Reg. 285/01, an employee is either working or not working. The family's cat and dog, certainly the dog, were entirely dependent on the Respondent's commitment to look after them. Because of this commitment, the Applicant was not able to pursue her personal endeavours outside of the workplace on those weekends. Therefore, as contemplated by the deemed work provision in O. Reg. 285/01, I find that the Respondent performed work within the meaning of the Act on certain weekends when the Applicants were away.

31. With respect to quantum of hours on those weekends, the Employment Standards Officer assessed one hour per day for pet supervision. I do not accept that approach. While the Respondent should not be paid for every hour she actually claimed for these weekends in my opinion, I do accept that she was required to perform some overflow tasks on weekends in addition to the time spent actually performing pet-related activities. Furthermore, I am required to avoid the docketing trap that s. 6 of O. Reg. 285/01 is designed to prevent. The fact is that the Respondent was required to be present on those weekends. For this reason, I assess 7.5 hours for each Saturday and Sunday that the Respondent was charged with pet supervision and performed other tasks. I base this on the 40-hour work week set out in the Respondent's employment contract, with a half hour deducted for meal breaks pursuant to ss. 20(1) of the Act. For the additional time that the Respondent was allegedly on call, for potential emergency pet care (i.e. Saturday and Sunday nights), I find that she was likely not present in the workplace but in her

apartment instead. She is therefore deemed not to have been working during those periods of time by virtue of ss. 6(2)(b) of O. Reg. 285/01.

c) Meal Breaks

32. The Act requires that employers provide a half hour meal break to employees working more than five hours per day. Although the Respondent states that she was unable to take meal breaks, I do not find this credible once the Applicants' children commenced school in September, 2010. A half hour has been deducted for meal breaks commencing from this time.

33. The Applicants submitted cell phone records in an attempt to prove that the Respondent did indeed take breaks throughout the day. Although I have considered this evidence, I do not think it is conclusive for two reasons. First, ss. 20(1) requires that meal breaks be provided, not simply breaks. Second, the fact that the Respondent may have been talking on the phone does not prove that she did, in fact, receive a meal break.

d) Minimum Wage

34. The Applicants did not pay the Respondent the minimum wage required by law. The Respondent was paid $400.00 per week. $400.00 per week divided by either 40 or 44 hours falls short of the minimum wage requirement of $10.25 which came into effect on March 31, 2010.

e) Public Holiday Pay

35. The Applicants insist that the Respondent did not work on any statutory holiday during her employment, while the Respondent insists the opposite. The Respondent agrees that she did not work on New Year's Day 2011 and Boxing Day 2010.

36. On this point I prefer the evidence of the Respondent. The Applicants initially claimed to be away on certain public holidays, but when presented with contrary evidence, later did admit their mistake with respect, for example, Thanksgiving and Christmas Day. The Applicants also suggested that the Respondent was a guest at these gatherings, and as such was not required to work. If she cleared the plates and helped clean up, she did so as a guest. For reasons stated above, I reject this characterization of events. Even if it is customary for guests to help clear plates, this does not obviate the Applicants from the Act's deemed work provisions. With respect to those public holidays where the Applicants were out of town, the same analysis regarding weekend pet supervision and overflow task performance applies. In the absence of evidence showing that the Applicants actively prevented the Respondent from performing work on these days as contemplated by s. 6 of O. Reg. 288/01, I find that the Respondent is entitled to public holiday pay for Canada Day 2010, Labour Day 2010, Thanksgiving Day 2010, Christmas Day 2010, and Family Day 2011.

d) Vacation Time / Vacation Pay

37. The Act requires that employers provide 4% vacation pay in lieu of vacation time off. The Applicants claim that the Respondent took her vacation under the terms of her employment contract, while the Respondent claims she was required to work during this time.

38. The Applicants contend, essentially they deem, that the Respondent was "off" (for vacation purposes) during certain times during the relevant period because the family was away for one reason or another. For the reasons reiterated throughout this decision, I reject that characterization. Based on the evidence before me, it is clear that the Respondent had some level of work to perform while the family

was away. Similarly, because no evidence was presented to indicate that the Applicants actively prevented the Respondent from working (quite the contrary), I am persuaded that the Respondent performed work during the times in question. As a result, pursuant to s. 35.2 of the Act she is entitled to 4% of on her earnings for the relevant period of employment.

e) Deduction from Wages

39. In an intended generous gesture, the Applicants opened a cell phone account for the Respondent under their family plan. However, the Applicants deducted the monthly payments for this account from the Respondent's wages. They claim that this was understood and accepted. It was clear that they regard the Respondent as ungrateful in complaining about this issue.

40. Conflicting evidence was led as to whether there was a verbal agreement to authorize this deduction, or at a minimum, whether the Respondent understood the nature of the deductions. In my view it is unnecessary to resolve this factual dispute. Section 13 of the Act requires that any deductions from an employee's wages must be agreed to in writing. During the hearing, it became apparent that there was no written agreement authorizing the deductions, and in their closing submissions the Applicants admit that it was a verbal, not written, agreement. As a result, the Respondent is entitled to reimbursement for all unauthorized deductions made during the relevant period.

f) Termination Pay

41. The Respondent was paid two weeks termination pay as required by the Act, but at the rate noted which fell below the minimum wage requirement, and further, based on a 40 hour work week. As I have found that the Respondent's regularly worked the maximum of 44 hours per week (before overtime), her termination pay must be adjusted to account for this and for the proper minimum wage rate.

Calculation of Order

42. Section 111 of the Act provides that wages are only recoverable for the six month period preceding the complaint, unless the employer is guilty of repeated contraventions, in which case a twelve month limitation period applies. As I have found this to be the case, the Respondent is entitled to recover wages owing from the period of June 3, 2011 to June 3, 2011, the date on which her complaint was filed.

43. Based on the foregoing reasons, I order the Applicants to pay the Respondents the following amounts:

a) Regular Wages

44. The Applicants are ordered to pay the Respondent $2,125.88 in respect of unpaid regular wages for the relevant period. This calculation is based on the 44 hour regular work week which I have found to apply, and the proper minimum wage of $10.25 per hour.

b) Overtime Wages

45. The Applicants are ordered to pay the Respondent $7,787.44 in respect of unpaid overtime for the relevant period. This calculation is based on the excess hours regularly worked by the Respondent during a typical work week and, in addition, time spent for pet care and other work done on weekends while the family was away as discussed previously.

c) Public Holiday Pay

46. I have found that the Respondent is entitled to public holiday pay (and premium pay) for Canada Day 2010, Labour Day 2010, Thanksgiving Day 2010, Christmas Day 2010, and Family Day 2011. The Applicants are ordered to pay the Respondent $1,045.80 in this respect.

d) Termination Pay

47. Because the Applicants paid the Respondent termination pay based on a 40 hour, rather than 44 hour work week, an additional $106.08 is ordered to be paid.

e) Vacation Pay

48. The Applicants are ordered to pay the Respondent $1,195.89 in vacation pay. This is based on 4% of all gross earnings, including overtime, public holiday pay, and termination pay, in the twelve months preceding her claim.

f) Unauthorized Deductions

49. The Applicants are ordered to pay the Respondent $497.82 in respect of the unauthorized deductions made between June 3, 2010 and June 3, 2011.

Conclusion

50. For all the foregoing reasons, the Order to Pay is varied. I find the Applicants' owe the Respondent $13,092.29 in unpaid wages and entitlements under the Act. As the Act limits the maximum amount payable under the Act to $10,000.00, the Applicants are hereby directed to pay the difference between $10,000.00 and the existing monies held in trust, namely $2,293.87, to the Director of Employment Standards, so that the full amount owing of $10,000.00 may be disbursed forthwith to the Respondent.

0174-12-M Unilever Canada, a Division of Unilever Inc., Applicant v. United Food and Commercial Workers Canada, Local 175, Responding Party.

Health and Safety – *Occupational Health and Safety Act* – The inspector ordered the School Board to re-inspect a particular school to verify the accuracy of the existing asbestos survey – ETFO appealed the order seeking broader relief relating to all schools in the School Board – The Board followed the jurisprudence which makes it relatively clear that an appeal under s. 61 is not in the nature of an enquiry where all issues are at large, rather the appeal is of a decision or non-decision by the Ministry of Labour – Accordingly the Board found the appeal was restricted to the particular school and the wide relief sought by ETFO for all schools was beyond the jurisdiction of the Board in this appeal – Matter continues

BEFORE: *Diane L. Gee*, Alternate-Chair.

DECISION OF THE BOARD: June 7, 2012

1. This is a Ministerial reference to the Board pursuant to s. 115 of the *Labour Relations Act, 1995*. The Minister referred the following questions for advice:

> a. Has Arbitrator Hetz lost his jurisdiction to hear and determine the grievance referred to him by the parties given the circumstances of this case and his delay in issuing a decision?
>
> b. If not, does the Minister of Labour have the power to order, under subsection 48(11) of the Act, that Arbitrator Hetz has lost his jurisdiction to hear and determine the grievance referred to him by the parties?
>
> c. If the answer to either question 1 or 2 is "yes", are the Union and the Employer required to appoint a new arbitrator or constitute a board of arbitration, such that if they fail to do so a party may request a Ministerial appointment pursuant to subsection 48(4) of the Act?

Background

2. At the invitation of the parties, Arbitrator Peter Hetz commenced a hearing to arbitrate individual and policy grievances relating to vacation entitlement under the collective agreement between the union (UFCW Canada, Locals 175 & 633) and the employer (Unilever Canada, a Division of Unilever Inc.) on or about August 1, 2008.

3. This arbitration concluded on or about November 21, 2010.

4. Between July 2011 and October 2011, the union made several inquiries of the Arbitrator about the issuing of the decision. No decision was received.

5. On or about November 28, 2011 the union filed a complaint with the Ministry asking it to intervene in an attempt to have the decision issued by the Arbitrator. The Ministry, through the Dispute Resolution Services Branch, contacted the Arbitrator on a number of occasions throughout December 2011 and in January and March 2012. The Arbitrator did not issue his decision.

6. In a letter dated April 11, 2012 the union requested the appointment of a different arbitrator pursuant to subsection 48(4) of the Act.

7. On April 16, 2012, counsel for the employer opposed the union's request, noting that the parties had appointed the Arbitrator, that a hearing had been held and submitted and that the Minister was without jurisdiction to appoint a second arbitrator under s. 48(4).

8. For completion the union also filed a complaint with the Ontario Labour-Management Arbitrators' Association on February 23, 2012, which is being addressed by the Association under Article 18 of its Code of Ethics.

Statutory Provisions

9. Section 115 states:

> 115. (1) The Minister may refer to the Board any question which in his or her opinion relates to the exercise of his or her powers under this Act and the Board shall report it decision to the question.

. . .

10. The relevant subsections under section 48 are:

. . .

> (4) Despite subsection (3), if there is failure to appoint an arbitrator or to constitute a board of arbitration under a collective agreement, the Minister, upon the request of either party, may appoint the arbitrator or make the appointments that are necessary to constitute the board of arbitration, as the case may be, and any person so appointed by the Minister shall be deemed to have been appointed in accordance with the collective agreement.
>
> (5) On the request of either party, the Minister may appoint a settlement officer to endeavour to effect a settlement before the arbitrator or arbitration board appointed under subsection (4) begins to hear the arbitration. However, no appointment shall be made if the other party objects.
>
> (6) Where the Minister has appointed an arbitrator or the chair of a board of arbitration under subsection (4), each of the parties shall pay one-half the remuneration and expenses of the person appointed, and, where the Minister has appointed a member of a board of arbitration under subsection (4) on failure of one of the parties to make the appointment, that party shall pay the remuneration and expenses of the person appointed.
>
> (7) An arbitrator shall give a decision within 30 days after hearings on the matter submitted to arbitration are concluded.
>
> (8) An arbitration board shall give a decision within 60 days after hearings on the matter submitted to arbitration are concluded.
>
> (9) The time described in subsection (7) or (8) for giving a decision may be extended,
>
> (a) with the consent of the parties to the arbitration; or
>
> (b) in the discretion of the arbitrator or arbitration board so long as he, she or it states in the decision the reasons for extending the time.
>
> (10) An arbitrator or arbitration board may give an oral decision and, if he, she or it does so, subsection (7) or (8) does not apply and the arbitrator or arbitration board,
>
> (a) shall give the decision promptly after hearings on the matter are concluded;
>
> (b) shall give a written decision, without reasons, promptly upon the request of either party; and
>
> (c) shall give written reasons for the decision within a reasonable period of time upon the request of either party.

> (11) If the arbitrator or arbitration board does not give a decision within the time described in subsection (7) or (8) or does not provide written reasons within the time described in subsection (10), the Minister may,
>
> (a) make such orders as he or she considers necessary to ensure that the decision or reasons will be given without undue delay; and
>
> (b) make such orders as he or she considers appropriate respecting the remuneration and expenses of the arbitrator or arbitration board.
>
> . . .

Parties' Submissions

11. The union submits that the Arbitrator has lost his jurisdiction to hear and determine the grievances and, alternatively, that the Minister has the power under s. 48 (11) to order that the Arbitrator has lost jurisdiction. Finally the union submits that once the Arbitrator has lost jurisdiction either party may request that the Minister appoint an arbitrator pursuant to s. 48(4).

12. The employer, despite its submissions to the Ministry, wrote to the Board that it does not take a position on the ministerial reference.

Determination

13. The facts in this matter are straightforward. An arbitrator having received a consensual appointment by the union and the employer, finished hearing the entire grievance, and yet has failed to deliver his decision to the parties.

14. The union, after repeatedly requesting the decision from the Arbitrator, directly and through the ministry, both without success, requested that the Minister appoint a different arbitrator pursuant to s. 48(4) of the Act.

Has Arbitrator Hetz lost his jurisdiction to hear and determine the grievance referred to him by the parties given the circumstances of this case and his delay in issuing a decision?

15. It is the Board's view that the first question referred to it by the Minister does not relate to the Minister's powers, and accordingly is not a question which the Board can answer on a Ministerial referral.

16. The Arbitrator is clearly seized with the jurisdiction to determine the grievance. He has been consensually appointed by the parties and has heard the matter, yet has failed to issue his decision in a timely manner. The power of the Minister to appoint an arbitrator under s. 48(4) of the Act exists only "if there is a failure to appoint an arbitrator… under the collective agreement". Here the parties have already appointed an arbitrator.

17. The power the Minister has under subsection 48(11), where an arbitrator fails to "give a decision within the time described in subsection (7) or (8)" only relates to two matters: first, the Minister may make "such orders as he or she considers necessary to ensure that the decision or reasons will be

given without undue delay" and second, the Minister may make orders concerning the appropriateness of the arbitrator's remuneration and expenses.

18. Both of these powers relate to the Arbitrator who has jurisdiction to resolve the dispute. The first gives the Minister the power to ensure that the decision will be given and second to address concerns over remuneration and expenses. Neither of these powers relate to determining whether the arbitrator has lost jurisdiction by failing to issue a decision.

19. In the Board's view, a determination of whether the Arbitrator has lost jurisdiction is not a specific power given to the Minister in the Act. Furthermore, it is the Board's view that it is the court that has the authority to determine whether an arbitrator has lost jurisdiction in such circumstances and, more importantly, to remedy the situation, should the court find that the arbitrator has lost jurisdiction.

20. Accordingly, the Board will not answer the first question from the Minister as it does not relate to a power of the Minister's.

If not, does the Minister of Labour have the power to order, under subsection 48(11) of the Act, that Arbitrator Hetz has lost his jurisdiction to hear and determine the grievance referred to him by the parties?

21. The advice the Board gives the Minister on the second question is that he does not have the power under subsection 48(11) to make an order that the arbitrator has lost jurisdiction.

22. As described above in paragraph 17, the minister's powers under subsection 11 where a decision is not provided to the parties within the time described are twofold: first, he has the power to ensure the decision is given without delay; and second he can make orders relating to the arbitrator's remuneration. Neither of these powers concern removing the arbitrator's jurisdiction to resolve a dispute.

23. As noted above the Board is of the view that this power rests with the Superior Court of Justice (Divisional Court) which has the power under section 2 of the *Judicial Review Procedure Act* to address such matters, including the Natural Justice issues raised by the union in their submissions.

24. Accordingly, the Board's advice to the minister on the second question is "no" he does not have such power.

If the answer to either question 1 or 2 is "yes", are the Union and the Employer required to appoint a new arbitrator or constitute a board of arbitration, such that if they fail to do so a party may request a Ministerial appointment pursuant to subsection 48(4) of the Act?

25. Given that the Board has not answered either question 1 or 2 in affirmative, there is no need to answer the final question posed by the Minister.

COURT PROCEEDINGS

3322-03-R; 2118-04-R (Court File No. C53992) Independent Electricity System Operator – and– Canadian Union of Skilled Workers, Labourers' International Union of North America, Labourers' International Union of North America, Ontario Provincial District Council, Labourers' International Union of North America, Local 1059, Ontario Lbour Relations Board and Attorny General of Ontario –and– Provincial Building and Construction Trades Council of Ontario and Greater Essex County District School Board

Charter of Rights and Freedoms **– Construction Industry – Judicial Review – Non-Construction Employer – The Board concluded ([2009] OLRB Rep. Nov/Dec 826) that the declarations required by s. 127.2 when an employer is found to be a non-construction employer substantially interfered with the process of collective bargaining, contrary to s. 2(d) of the *Charter*, and the infringement could not be saved by s. 1 – On judicial review, the Divisional Court found no such infringement ([2010 OLRB Rep. Jan/Feb 166) – On appeal, the Court of Appeal affirmed that freedom of association is enjoyed by individuals not unions – There was no substantial interference with members' s. 2(d) rights – A s. 127.2 declaration would not make it impossible for the unions' members to meaningfully exercise the freedom to associate – Appeal dismissed**

Superior Court of Justice (Court of Appeal), *Winkler C.J.O, Lang J.A.* and *Pattillo J.* (ad hoc), May 8, 2012

Winkler C.J.O.:

[1] The appellants, a number of construction trade unions, challenge the constitutional validity of s. 127.2 of the *Labour Relations Act, 1995*, S.O. 1995, c. 1, Sched. A. (the "LRA"). They allege that the provision violates s. 2(d) of the *Canadian Charter of Rights and Freedoms*.

[2] Section 127.2 permits a "non-construction employer" – essentially, an employer that does not sell construction services to third parties – to bring an application to the Labour Relations Board (the "Board") for a "non-construction employer" declaration. If an employer is found to be a non-construction employer, two things happen. First, the Board must declare that any trade union that represents, or may represent, construction employees of the employer, no longer represents them. Second, any collective agreement binding the employer and the trade union ceases to apply with respect to the employer insofar as it relates to the construction industry.

[3] In this case, the Independent Electricity System Operator ("IESO") brought a non-construction employer application. The Board concluded that the IESO met the statutory preconditions for a declaration that it is a "non-construction employer": while it performs construction work from time to time, it does no construction work for which it expects compensation from an unrelated person. However, the Board did not make a s. 127.2 declaration; rather, it referred the matter for a hearing by the Board to determine the constitutional validity of the provision.

[4] The Board declared s. 127.2 to be constitutionally inoperative in the circumstances of this case on the basis that s. 127.2 substantially interfered with the process of collective bargaining. The Board found that the provision was contrary to s. 2(d) of the *Charter* and that the infringement could not be justified under s. 1.

[5] The IESO brought an application for judicial review of that decision. The Divisional Court granted the application, set aside the Board's decision, and referred the matter back to the Board to issue a declaration in accordance with s. 127.2 of the LRA.

[6] The construction trade unions in this case appeal from the Divisional Court's decision: the Canadian Union of Skilled Workers ("CUSW"); the Labourers' International Union of North America;

the Labourers' International Union of North America, Ontario Provincial District Council; and Labourers' International Union of North America, Local 1059 (the final three parties collectively referred to as the "Labourers").

[7] The Provincial Building and Construction Trades Council of Ontario (the "Council") intervened before the Divisional Court and this court, advancing arguments in support of the appellants' position. The Council represents some 150,000 construction workers throughout Ontario.

[8] The Greater Essex County District School Board ("GECDSB"), which has been involved in on-going s. 127.2 proceedings, also intervened before both courts, advancing arguments in support of the IESO's position.

[9] I would dismiss the appeal from the decision of the Divisional Court. In my view, there is no reason to interfere with its decision. On the evidence in this case, a s. 127.2 declaration would not result in substantial interference with the rights of the appellants' members as guaranteed by s. 2(d) of the *Charter*.

A. BACKGROUND

(1) Legislative Context

[10] Section 127.2 of the LRA provides as follows:

> 127.2(1) This section applies with respect to a trade union[1] that represents employees of a non-construction employer employed, or who may be employed, in the construction industry.
>
> (2) On the application of a non-construction employer, the Board shall declare that a trade union no longer represents those employees of the non-construction employer employed in the construction industry.
>
> (3) Upon the Board making a declaration under subsection (2), any collective agreement binding the non-construction employer and the trade union ceases to apply with respect to the non-construction employer in so far as the collective agreement applies to the construction industry.
>
> (4) The Board may re-define the composition of a bargaining unit affected by a declaration under subsection (2) if the bargaining unit also includes employees who are not employed in the construction industry.

[11] Section 126(1) defines "non-construction employer" as "an employer who does no work in the construction industry for which the employer expects compensation from an unrelated person". CUSW and the Labourers (together the "appellants" or the "Unions") do not challenge this definition.

[12] These provisions fall within a part of the LRA that is tailored to the construction industry. Section 1 defines "construction industry" as "businesses that are engaged in constructing, altering, decorating, repairing or demolishing buildings, structures, roads, sewers, water or gas mains, pipe lines, tunnels, bridges, canals or other works at the site". Sections 126 to 168 establish specialized rules for the construction industry that operate in addition to the general provisions of the LRA and which, for the most part, prevail over the general provisions. These provisions were enacted in recognition that

employment in the construction industry has distinctive features, including that work tends to be episodic.

[13] In 1998 and 2000, the Legislature introduced a number of amendments to the LRA. Prior to the amendments, the LRA stipulated that an employer "who operates a business in the construction industry" was bound by the construction industry provisions of the Act. In a series of cases, the Board interpreted that phrase broadly so as to include anyone who effected construction, whether by hiring employees directly or by engaging contractors: see, for example, *Windsor (Board of Education for the City of)*, [1983] O.L.R.B. Rep. May 831; *Municipality of Metropolitan Toronto*, [1980] O.L.R.B. Rep. Jan. 62; *Re City of Toronto and Carpenters' District Council of Toronto and Vicinity*, (1980), 108 D.L.R. (3d) 141 (Ont. Div. Ct.); *Municipality of Metropolitan Toronto*, [1989] O.L.R.B. Rep. March 279.

[14] This broad interpretation meant that employers who strictly consumed construction services, but did not provide any construction services to third parties, were caught by the specialized labour relations regime for the construction sector. This had a number of implications for those employers. For instance, a number of private and public sector employers were bound by the province-wide collective bargaining scheme in the industrial, commercial and institutional ("ICI") sector of the construction industry. Collective agreements in the ICI sector are entered into by designated or certified employer and employee bargaining agents and apply on a province-wide basis. These agreements also invariably contain subcontracting clauses that prohibit the employer from subcontracting to non-union companies.

[15] The "non-construction employer" provisions were originally introduced by Bill 31, the *Economic and Development Workplace Democracy Act, 1998*. Bill 31 defined a "non-construction employer" as "a person who is not engaged in a business in the construction industry or whose only engagement in such a business is incidental to the person's primary business." The Bill provided a mechanism by which those non-construction employers who were already unionized in the construction industry could apply to the Board to end their collective bargaining obligations with the trade unions in respect of their construction industry employees.

[16] In introducing Bill 31, the Minister of Labour, the Honourable Jim Flaherty, described the purposes of the proposed non-construction employer provisions:

> Passing the *Economic Development and Workplace Democracy Act* would also address a long-standing issue. It would ensure that only employers in the construction industry are covered by the special construction provisions of the *Labour Relations Act*. This means that employers whose primary business is not construction, for example, retail employers, municipalities and school boards, can negotiate agreements specific to the circumstances of their sector. This corrects the situation of these employers being bound by the province-wide agreements that they have little opportunity to influence: Ontario, Legislative Assembly, *Official Report of Debates (Hansard)*, 36th Parl., 2nd Sess., (4 June 1998), at p. 1116 (Hon. Jim Flaherty).

[17] At the Bill's third reading, the Labour Minister noted that the Bill did "not exempt those [non-construction] employers from the *Labour Relations Act*. It just treats them the same as other employers in the province": Ontario, Legislative Assembly, *Official Report of Debates (Hansard)*, 36th Parl., 2nd Sess., (23 June 1998), at p. 1785 (Hon. Jim Flaherty).

[18] The Minister also noted that one of the objectives of the non-construction employer provisions was to open up the tendering process so that both non-union and union contractors could bid on work, thus increasing economic competitiveness: Ontario, Legislative Assembly, *Official Report of Debates (Hansard)*, 36th Parl., 2nd Sess., (23 June 1998), at p. 1785 (Hon. Jim Flaherty).

[19] The "non-construction employer" provisions of the LRA were subsequently amended by Bill 139, the *Labour Relations Amendment Act, 2000*.

[20] During second reading of Bill 139, Joseph N. Tascona, the Member of Provincial Parliament for Barrie-Simcoe-Bradford, highlighted the problems that the amendments were meant to address: "non-construction employers were unfairly bound by construction agreements over which they have no control and which do not relate to their businesses." The proposed changes were aimed at "prior labour relations decisions" and were meant to clarify the true "intent of the construction industry (regime), which is to deal with construction companies that are paid for their work because of the construction work they do": Ontario, Legislative Assembly, *Official Report of Debates (Hansard)*, 37th Parl., 1st Sess., (14 November 2000), at p. 5420-5421 (Joseph N. Tascona).

(2) Factual Context

[21] The evidentiary record in this case focuses on the impact of s. 127.2 on the IESO and the Unions, and to a lesser extent the GECDSB.

[22] The IESO was established by the *Electricity Act, 1998*, S.O. 1998, c. 15, Sched. A., as part of the restructuring and break-up of Ontario Hydro into separate entities. The IESO's primary functions are to operate the wholesale electricity markets in Ontario and to direct the operation of the province's high-voltage transmissions system.

[23] The IESO acquired the employees, assets, liabilities, rights and obligations of Ontario Hydro that were related to the activities previously carried out by Ontario Hydro's Central Market Operator business unit.

[24] Following the restructuring of Ontario Hydro, the IESO recognized the bargaining rights of the Power Workers' Union and the Society of Professional Engineers for all non-management employees that were transferred from Ontario Hydro. The collective bargaining relationships with the two unions are regulated by the LRA's general provisions, not the construction industry provisions.

[25] The IESO refused to recognize the bargaining rights of the two appellant construction Unions. CUSW had acquired its bargaining rights in 1999 through a displacement application. It displaced the International Brotherhood of Electrical Workers, which had acquired bargaining rights for a unit of electricians and related classifications at Ontario Hydro in 1949. The Labourers acquired bargaining rights for a bargaining unit of construction labourers and related classifications of Ontario Hydro in 1949.

[26] The IESO refused to recognize the long-standing bargaining rights enjoyed by the Unions on the basis that it was strictly a consumer of construction services and employed no members of either union.

[27] In 2004, the IESO brought non-construction employer applications pursuant to s. 127.2. The Unions brought, in turn, successor rights applications pursuant to s. 69 and s. 1(4) of the LRA.

[28] The Board heard the Unions' applications first. It concluded that there had been a sale of business and that the IESO was bound by the collective agreements that had been binding on Ontario Hydro: *Ontario Electricity Financial Corp. and Independent Electricity System Operator*, [2006] O.L.R.B. Rep. July/August 594.

[29] As a result of the Board's decision, the IESO became bound to two province-wide agreements negotiated by employer bargaining agencies: one negotiated by the Electrical Power Systems Construction Agency and the Labourers' Provincial Collective Agreement in the ICI sector of the construction industry.

[30] The IESO and the Unions also entered into direct negotiations for new collective agreements in respect of construction work performed by the IESO in the Electrical Power System sector, which accounts for the majority of the IESO's construction work. During bargaining, the IESO stated that it did not intend to hire construction workers but rather intended to contract out all of its construction work. It wanted the flexibility to use the contractor of its choice.

[31] The IESO reached an agreement with CUSW and the Labourers. Both agreements permitted the IESO to use contractors or subcontractors, provided that the subcontractors and contractors were in contractual relations with the Unions or agreed to be bound by the terms of the applicable agreements when performing such work.

[32] Contracting and subcontracting provisions such as these are commonly found in collective agreements in the construction industry. Hiring hall provisions are also common. These provisions are designed to ensure work opportunities for union members, who typically go from job to job and project to project as their services are required. On this appeal, the Unions and the Provincial Building and Construction Trades Council emphasized the importance of such provisions as the economic lifeline for construction workers.

[33] Since the collective agreements were reached, the IESO has never employed any members of CUSW or the Labourers directly. Rather, members of the Unions have performed work for the IESO as employees of IESO subcontractors. The amount of worked performed by the Unions' members has been minimal.

B. DECISIONS BELOW

(1) Board's Decision

[34] In a 62-page decision, the Board concluded that s. 127.2 substantially interferes with the process of collective bargaining contrary to s. 2(d) of the *Charter* and the infringement cannot be justified under s. 1.

[35] The Board described the effect of s. 127.2 as interfering with past and future collective bargaining:

> **160** In the present case, sections 127.2(2) and (3) of the Act have the effect of invalidating all provisions of collective agreements negotiated by the Unions in the past on behalf of their members. In addition, the provisions affect future collective bargaining by terminating the Unions' existing right to engage in collective bargaining on behalf of their members with the IESO after the declarations contemplated thereunder are made. The challenged provisions therefore both repudiate past collective bargaining processes relating to all issues

> negotiated between the parties by nullifying all gains achieved in bargaining to date and also affect future processes by stripping the Unions of their right to have their representations considered by the IESO in a process of good faith bargaining following the issuance of the declarations mandated thereunder….
>
> **161** While the legislation does not prevent future representations from being made, as noted at paragraph 114 of *Health Services*, "the right to collective bargaining cannot be reduced to a mere right to make representations." Without any obligation on the IESO to listen in future to the Unions' representations regarding its members' shared workplace goals and the nullification of all terms of past collective agreements negotiated by the Unions on their behalf, the effect of section 127.2 is to interfere both with past collective bargaining processes and future ones.

[36] In the Board's view, s. 2(d) protects the process by which the Unions' members seek to achieve their goals of employment security as well as the process by which they negotiate terms and conditions of employment if they are employed. At para. 175, the Board stated:

> In the present case, the evidence indicates that one of the most significant goals of the Unions' members is achieving employment security through the negotiation of contracting and subcontracting protections in their collective agreements with all those employers, including the IESO, with whom they have existing bargaining rights. The scope of the constitutional right to collective bargaining protects the *process* by which the Unions seek to achieve such goals on behalf of their members as well as the *process* by which they negotiate terms and conditions of employment in the event their members are employed. [Emphasis in original.]

[37] The Board rejected the argument that there was no denial of freedom of association because the IESO employed no Union members directly:

> **165** The fact that the IESO does not now employ any of the Unions' members directly, nor has it ever employed them directly since the re-organization of its predecessor, Ontario Hydro, does not further affect my finding that the provisions in issue interfere with the process of collective bargaining in the circumstances before me. It is, in my view, far too narrow a conception of the right to a process of collective bargaining to suggest that what is protected is only the ability of trade union members to negotiate terms and conditions of employment with their direct employer.

[38] The Board found that s. 127.2 discourages the Unions' members from coming together to pursue common goals:

> **180** Given the importance of the collective agreement and the significant job security protections contained within it to the scheme of

> collective bargaining, the legislative nullification of every single provision negotiated by the Unions during past processes of collective bargaining as is contemplated under s. 127.2, in my view, affects matters of sufficient importance to be likely to discourage the Unions' members from coming together to pursue common goals.
>
> . . .
>
> **182** The legislation in this case, in any event, also goes a step further by ending the Unions' existing right to negotiate on behalf of their members in future processes unless bargaining rights can be re-established through certification or voluntary recognition. In the circumstances, *it is difficult to imagine what could be more discouraging to the Unions' members' interest in coming together to pursue common goals than the challenged provisions, which both annihilate all of the gains made by their chosen representatives in respect of their workplace goals to date and strip the Unions of the right to represent and bargain with the employer in future*. The Unions members are thereby required to start all over again at square one by first re-establishing their right to even have their voices heard, and listened to, by the IESO. [Emphasis added.]

[39] The Board noted that the question to be decided was whether there was substantial interference with the process of collective bargaining. The question was not whether the Unions' members continued to have access to an adequate collective bargaining regime under the general provisions of the LRA: para. 183.

[40] Moreover, a Board hearing to determine whether the IESO met the statutory definition of a non-construction employer was "hardly the same as good faith negotiation or consultation", since the provisions "eliminate any possibility of meaningful consultation": para. 190.

[41] Finally, the Board found that the breach of s. 2(d) was not justified under s. 1 of the *Charter*. The objective of the legislation was not of sufficient importance to override *Charter* rights. And, even if it were, s. 127.2 did not satisfy the minimal impairment test and its salutary effects did not outweigh its deleterious effects.

(2) Divisional Court's Decision

[42] In reasons written by Swinton J., the Divisional Court defined the issue to be decided as whether s. 127.2, either in its purpose or effect, substantially interferes with the process of collective bargaining: para. 53.

[43] The court concluded that the purpose of s. 127.2 is not to prevent collective bargaining, nor is it meant to "break the Unions". Rather, the purpose is to remove non-construction employers from the labour relations regime tailored for the construction industry. As the purpose of s. 127.2 is valid, the provision's validity turns on whether its effect is to substantially interfere with the process of collective bargaining.

[44] The court found that, on the facts, it was difficult to find a violation of s. 2(d): para. 68. The IESO has never had employees working in the construction industry. At no time has any person

employed by, or engaged by, the IESO ever participated in any vote to have CUSW or the Labourers certified as collective bargaining agents in respect of dealings with the IESO. Had the Board granted a s. 127.2 declaration, no employees of the IESO would have been affected by the termination of the collective agreements and the Unions' bargaining rights. Furthermore, the IESO has indicated that it does not intend to carry on construction in the future using its own employees. Accordingly, no employees or potential employees will be denied access to the process of collective bargaining or lose the benefits of a collective agreement. The fact that the IESO may employ construction workers in the future does not constitute a sufficient evidentiary basis for finding substantial interference with the Charter rights of IESO employees.

[45] While the IESO argued that employment was a condition precedent for s. 2(d) protection of the collective bargaining process, the court found that it was unnecessary to decide that issue. Rather, the Divisional Court considered the effect a s. 127.2 declaration would have on the Unions' members in the circumstances of the case:

> **78** A declaration in this case would not nullify other collective agreements that the Unions have with construction contractors and subcontractors. Members of the Unions will continue to be either direct employees of construction industry contractors or subcontractors, or they will be hired from Union hiring halls by those entities. Moreover, a declaration does not prevent the Unions from seeking to organize the employees of other construction industry contractors.
>
> **79** The individuals who will be detrimentally affected by the declaration sought are the Unions' members employed by contractors who seek contracts with the IESO to do construction work. If the Unions' collective agreements continue to apply, only Union members will be allowed to do the construction work.
>
> **80** The effect of the Board's decision is to protect the collective agreements and acquired bargaining rights of the Unions and their members *under the construction industry provisions*. In doing so, the Board protected their access to their preferred bargaining structure and the particular outcomes of bargaining. That was an error in law, as the guarantee of freedom of association in s. 2(d) of the *Charter* does not extend Constitutional protection to a preferred process or a particular substantive outcome; rather, it protects the collective bargaining process from substantial interference. [Emphasis in original.]

[46] The Divisional Court concluded, at para. 83, that there was no substantial interference with s. 2(d) rights in this case:

> ... the effect of the declaration is to terminate collective agreements and bargaining rights under a particular statutory regime. However, employees of the non-construction employer continue to have the right to organize and bargain with their employer under the general provisions of the *LRA*. While the IESO has no construction employees, in workplaces where construction employees are affected by a declaration, they continue to have the right to organize under the *LRA* and to bargain collectively (as in *Greater Essex*, for example). Therefore, I conclude that there has not been substantial interference with the process of collective bargaining.

[47] Even if there were substantial interference with the collective bargaining process, the court still would have declined to find a violation of s. 2(d). In *Health Services and Support-Facilities Subsector Bargaining Assn. v. British Columbia*, the Supreme Court held that s. 2(d) would not be violated, despite substantial interference with collective bargaining, if there were good faith negotiations or consultation with the unions before the legislation was enacted: 2007 SCC 27 (CanLII), [2007] 2 S.C.R. 391. Relying on that principle, the Divisional Court affirmed, at para. 86, that there was no breach of s. 2(d):

> **86** In the present case, we are not dealing with legislation changing particular collective agreements with known bargaining agents. Here, the legislation covers employers who come within the definition of "non-construction employer" and provides a process for removing them from the construction industry bargaining regime only if there has been a determination by the Board that a particular employer is a non-construction employer. Therefore, the acquired rights of unions and their members can be terminated only after an adjudicative process before the Board to determine whether labour relations in the place of employment are properly subject to the specialized regime. The Board's case law shows that the test for removal is a rigorous one, and a number of employers have failed to meet it. This is further evidence that the legislation does not substantially interfere with the process of collective bargaining; rather, it regulates the process of bargaining and allows some employers to move into the general provisions because of the nature of their business.

In the view of the court, the legislation regulates the process of collective bargaining and allows employers that do not do business in the construction industry to operate under the general LRA scheme.

[48] Finally, the court concluded that, even if there were a violation of s. 2(d) of the *Charter*, the infringement was justified under s. 1.

C. ISSUES ON APPEAL

[49] The appellants raise two main issues on appeal: does s. 127.2 comply with s. 2(d) of the *Charter* and, if not, is the breach justified by s. 1 of the *Charter*?

[50] In arguing that there is a breach of s. 2(d), the appellants make three main submissions. First, they contend that the Divisional Court's decision is inconsistent with the Supreme Court of Canada's decisions in *B.C. Health Services, and in Ontario (Attorney General) v. Fraser*, 2011 SCC 20 (CanLII), [2011] 2 S.C.R. 3. In particular, they submit that nullifying collective agreements and terminating bargaining rights constitutes substantial interference with collective bargaining.

[51] Second, and central to the appellants' argument that s. 127.2 breaches s. 2(d) of the *Charter*, is their contention that the Divisional Court erred in restricting s. 2(d) constitutional protection to direct employment relationships. In their view, s. 2(d) should be interpreted broadly and generously to protect the Unions' members who are not employed by the IESO.

[52] Third, the appellants submit that the Divisional Court erred in finding that there was no substantial interference with the process of collective bargaining on the basis that any future direct-hire IESO construction employees could seek to organize under the general provisions of the LRA.

[53] If there is a breach of s. 2(d), the appellants submit that the breach is not justified under by s. 1.

D. ANALYSIS

[54] All of the parties agree that the standard of review of the Board's decision is correctness, since the Board was applying the Charter: *Cuddy Chicks Ltd. v. Ontario (Labour Relations Board)*, 1991 CanLII 57 (SCC), [1991] 2 S.C.R. 5.

(1) Is the decision inconsistent with *B.C. Health Services* and *Fraser*?

[55] In my view, the Divisional Court committed no error in articulating and applying the governing principles from *B.C. Health Services* to this case. The decision below is also consistent with the decision of the Supreme Court in *Fraser*, which was released after the Divisional Court's decision, as the majority decision in *Fraser* reaffirms the Supreme Court's earlier decision in *B.C. Health Services*.

[56] The Divisional Court recognized that s. 2(d) protects "the right of employees to associate in a process of collective action to achieve workplace goals, but does not ensure a particular outcome in a labour dispute or guarantee access to any particular statutory regime": *B.C. Health Services*, para. 19. I agree with the Divisional Court that freedom of association, as guaranteed by s. 2(d), is enjoyed by individuals, not by unions.

[57] As *Fraser* clarifies, at para. 54, *B.C. Health Services* "affirms a derivative right to collective bargaining, understood in the sense of a process that allows employees to make representations and have them considered in good faith by employers, who in turn must engage in a process of meaningful discussion."

[58] For there to be a breach of s. 2(d) there must be "substantial interference" with associational activity. The Divisional Court relied on the articulation of the substantial interference test as set out at paras. 92-93 of *B.C. Health Services*:

> To constitute *substantial interference* with freedom of association, the intent or effect must seriously undercut or undermine the activity of workers joining together to pursue the common goals of negotiating workplace conditions and terms of employment with their employer that we call collective bargaining….
>
> Generally speaking, determining whether a government measure affecting the protected process of collective bargaining amounts to substantial interference involves two inquiries. The first inquiry is into the importance of the matter affected to the process of collective bargaining, and more specifically, to the capacity of the union members to come together and pursue collective goals in concert. The second inquiry is into the manner in which the measure impacts on the collective right to good faith negotiation and consultation. [Emphasis in original.]

[59] The substantial interference test is spelled out in *Fraser*, at para. 47, in the following terms:

> What is protected is associational activity, not a particular process or result. If it is shown that it is impossible to meaningfully exercise the right to associate due to substantial interference by a law (or absence of laws: see *Dunmore*) or by government action, a limit on the exercise of

> the s. 2(*d*) right is established, and the onus shifts to the state to justify the limit under s.1 of the *Charter*.

[60] The threshold for establishing substantial interference with the process of collective bargaining is a high one. "In every case", writes the majority *Fraser* at para. 46, "the question is whether the impugned law or state action has the effect of making it impossible to act collectively to achieve workplace goals."

[61] The Divisional Court determined that, on the evidentiary record before the court, there was no substantial interference with the Union members' s. 2(d) rights. In its view, the facts in this case are distinguishable from those in *B.C. Health Services*. I agree.

[62] As explained by the Divisional Court at para. 81, a key difference is that in *B.C. Health Services* there was a prohibition on future bargaining with respect to important issues:

> What was significant to the Supreme Court of Canada in that case was the legislated interference with the terms of existing collective agreements between the employers in the health sector and the unions with which they had negotiated those terms, as well as the prohibition on bargaining important issues such as contracting out, bumping and layoff. The annulment of existing terms and the prohibition on future bargaining with respect to these important issues caused substantial interference with the process of collective bargaining.

[63] While s. 127.2 requires the termination of collective agreements and bargaining rights acquired under the construction industry provisions if an employer is found to be a non-construction employer, the bargaining rights and rights under the agreements are terminated because the employer is no longer a construction employer.

[64] The Legislature has determined that the specialized construction provisions are not appropriate for a non-construction industry employer. Were the Unions not already certified to represent IESO construction employees under the construction provisions of the LRA, they would be ineligible to do so under current LRA provisions. However, without s. 127.2, the Unions would be entitled to remain under the construction regime in perpetuity.

[65] Employees of a non-construction employer are still free to seek certification or voluntary recognition under the general provisions of the LRA. *B.C. Health Services and Fraser* make it clear that s. 2(d) does not guarantee access to any particular statutory regime.

[66] That construction employees of non-construction employers are still able to engage in a process of collective bargaining is evidenced by the GECDSB's experience. In 2004, the GECDSB brought a s. 127.2 application, seeking to terminate the bargaining rights of the United Brotherhood of Carpenters and Joiners of America, Local 44 (the "Carpenters") under the construction regime. The Board allowed the application, finding the GECDSB to be a non-construction employer. However, the school board chose to voluntarily recognize the Carpenters' bargaining rights under the general LRA regime on behalf of carpenters employed by the GECDSB.

[67] Moreover, as I explain below, the Unions' members will continue to enjoy other aspects of the freedom of association.

(2) Are non-employees entitled to a constitutional right to bargain collectively?

[68] The appellants submit that the Divisional Court erred in failing to recognize constitutional protection for the process of collective bargaining between the IESO and the Unions on behalf of their members who are not, and may never be, employed by the IESO. I cannot accede to this submission.

[69] The Divisional Court found it difficult to see how there would be interference with any associational activity if a s. 127.2 declaration were to be granted, since the IESO has never had any employees working in the construction industry and given the following additional facts:

- While the IESO is bound to collective agreements negotiated under the construction provisions of the LRA, those agreements arose as a result of a successor rights application and a decision by the Board. At no time has any person employed by, or engaged to provide services to, the IESO ever participated in any vote to have CUSW or the Labourers certified as collective bargaining agents. Therefore, if the IESO were declared to be a non-construction employer, no employee would be affected by the termination of the collective agreements and the Unions' bargaining rights.

- The IESO has indicated that it does not intend to carry on construction using its own employees, and so no future employees will be denied benefits under the collective agreements.

- The interests of the Unions' members could be negatively affected because of the potential loss of future employment opportunities. However, s. 2(d) protects the process of collective bargaining, not the fruits of bargaining or a particular bargaining method.

- If a non-construction employer declaration were granted, the Unions' members could still come together and pursue common goals. They will continue to be either direct employees of construction contractors or subcontractors, or they will be hired from union hiring halls by those entities. A declaration in this case would not nullify other collective agreements with construction contractors and subcontractors.

- The Unions can still seek to organize the employees of other construction industry contractors.

[70] The Unions submit that the Divisional Court accorded diminished value to its members' s. 2(d) rights because they were achieved under a successor rights provisions. However, as I read the Divisional Court's reference to successor rights, the point the court was making was that s. 2(d) *Charter* rights are enjoyed by individuals. Here, the appellants cannot point to any individuals who have joined together to have CUSW or the Labourers certified as their bargaining agent with respect to the IESO.

[71] As noted above, the Divisional Court found that it was unnecessary to address the IESO's submission that employment is a necessary pre-condition for constitutional protection of the collective bargaining process.

[72] I agree that it was unnecessary for the Divisional Court to decide whether employment is a necessary pre-condition to engage s. 2(d) protection of collective bargaining in all cases. This court's task is not to consider issues in the abstract but to decide whether, on the facts before it, the Divisional Court erred in finding that there was no substantial interference with the s. 2(d) rights of the Unions' members who are not employed by the IESO.

[73] The appellants point to two cases in making the argument that s. 2(d) protection should extend to the Unions' members, none of whom are employed by the IESO: *International Longshoremen's Assn., Local 273 v. Maritime Employers' Assn.*, 1978 CanLII 158 (SCC), [1979] 1 S.C.R. 120; *Blouin Drywall Contractors v. United Brotherhood of Carpenters and Joiners of America, Local 2486* (1975), 8 O.R. (2d) 103 (C.A.). Relying on these cases, the appellants submit that the Divisional Court failed to recognize the protections afforded to union members who are not direct-hire employees.

[74] These cases do not, in my view, assist the appellants' submission. Both cases turn on their particular facts.

[75] In the *Longshoremen's* case, the question was whether there could be said to be a strike when union members requisitioned by the employer from the union hiring hall refused to cross a picket line set up by another group of unionized workers. The union took the position that the union members were not employees and thus the refusal to report did not constitute an unlawful strike.

[76] The court held that the union members did not technically become employees until they reported for work. However, the set-up under the hiring hall regime agreed to by the parties overcame this so that the failure to honour the call to report amounted to a strike. The court was satisfied that references in the collective agreement to "employees" referred to those workers covered by the agreement, commencing from the effective date of the agreement. In determining that the union members were employees for strike purposes, the court considered the intentions of the parties in the context of the particular circumstances of that case: that the employer could only employ union members and that the union would supply them when requisitioned.

[77] *Blouin Drywall* arose in the construction industry context. Under the collective agreement between the parties, preference in hiring was given to union members who were made available through the union's hiring hall. The union brought a grievance claiming damages after the company hired non-union carpenters when there were union members available.

[78] The arbitration board awarded the union damages for lost earnings suffered by the non-employee members of the union as a result of the company's breach of the collective agreement. On appeal before this court, the issue was whether the arbitration board exceeded its jurisdiction in making the award, since the LRA does not extend the binding effect of a collective agreement or award beyond "employees".

[79] The court concluded that the arbitration board had not exceeded its jurisdiction under the LRA since the relevant provisions did not preclude the parties from agreeing to confer rights or benefits on non-employee union members and such rights may be the subject of the grievance procedure.

[80] In my view, it is wrong to read these two cases too broadly. They do not stand for the proposition that all workers who are members of a construction union are employees of all employers

in that industry, notwithstanding that the workers have never been and never will be employed by a particular employer. Nor do they support the appellants' argument that the benefits enjoyed by unionized employees in a hiring hall setting necessarily extend to all fellow union members.

[81] Rather, as I have stated, the cases turn on their particular facts and, more specifically, on the terms of the collective agreements in question. The agreements obligated the union to supply and the employer to obtain employees through a hiring hall. The court in each case was satisfied that the parties intended to bind and benefit the union members in question, even though they were not employed by the employer at the relevant time. The courts had to provide remedies in the context of circumstances in which agreements were breached. The decisions did not create employment relationships where none existed.

[82] Moreover, it is significant that the two decisions are labour relations cases, not constitutional cases. As *Fraser* reminds us, this different context is significant. In *Fraser,* the court was careful to distinguish between what is meant by a process of collective bargaining for s. 2(d) *Charter* purposes from what collective bargaining entails in a statutory labour relations context.

[83] The appellants' submission that its members should enjoy s. 2(d) protection for collective bargaining with the IESO does not, however, strictly rely for support on these labour relations decisions. The appellants submit that the Divisional Court erred in restricting its inquiry to, and focusing solely on, the impact of s. 127.2 on direct hires, thus adopting a non-contextual, technical and unduly narrow approach to the s. 2(d) issue. In their submission, the Divisional Court's decision ignores the reality of the construction industry in which workers are dependent for their employment opportunities on the industry as a whole rather than on a particular employer. The ability of such workers to freely negotiate hiring hall and subcontracting provisions is fundamental to the process of collective bargaining in the construction industry.

[84] In my view, there is no merit to this submission. It is clear from the Divisional Court's reasons that it was mindful of the unique features of labour relations in the construction sector and considered the effect a s. 127.2 declaration would have on the Unions' members: see paras. 78-79.

[85] The court simply found that the appellants had not demonstrated that s. 127.2 makes it impossible to meaningfully exercise the freedom to associate due to substantial interference. As recognized by the Divisional Court, the Unions' members are able to continue to bargain with their construction employers and to seek to organize more construction employers. They are free to organize under the general provisions of the LRA. The Divisional Court recognized that the interests of the Unions' members could be negatively affected because of the loss of future employment opportunities were a s. 127.2 declaration to be made. However, s. 2(d) does not extend constitutional protection to employment opportunities.

[86] Rather, the guarantee of freedom of association under s. 2(d) provides protection against substantial interference with the freedom to associate to achieve collective goals. Section 2(d) is said to protect a right to collective bargaining in a derivative sense in that "[l]aws or government action that make it impossible to achieve collective goals *have the effect* of limiting freedom of association, by making it pointless" (emphasis in original): see *Fraser*, at para. 46. The court in *Fraser* reiterated the description of good faith bargaining from *B.C. Health Services* as requiring the parties to meet and engage in meaningful dialogue, and, while not dictating any particular model or process, requiring an employer to consider employee representations in good faith.

[87] It is difficult to see why a constitutional obligation should be placed on the IESO to bargain workplace issues with the Unions on behalf of its members, who are not employed by the IESO and who are employed by other employers.

[88] The Board, in the instant case, found that "the scope of the constitutional right to collective bargaining protects the *process* by which the Unions seek to achieve" their key goals of "achieving employment security through the negotiation of contracting and subcontracting protections in their collective agreements" as well as the process by which they negotiate terms and conditions of employment in the event their members are employed.

[89] *Fraser*, however, makes it clear that s. 2(d) does not protect access to a particular statutory process or the fruits of bargaining. I agree with the Divisional Court's observation that the "effect of the Board's decision is to protect the collective agreements and acquired bargaining rights of the Unions and their members *under the construction industry provisions*. In doing so, the Board protected their access to their preferred bargaining structure and the particular outcomes of bargaining": para. 80 (emphasis in original).

(3) Is there substantial interference where there is access to the general LRA regime?

[90] In the appellants' submission, the effect of a s. 127.2 declaration – the nullification of the current collective agreements between the Unions and the IESO and the termination of the Unions' bargaining rights – constitutes a breach of s. 2(d). The appellants further contend that the fact that any future construction workers employed by the IESO are able to seek to organize under the general provisions of the LRA does not negate the *Charter* breach.

[91] In effect, the appellants say that the Divisional Court's reasoning is that no constitutional right will be found to exist (and there will be no breach) where there is a possibility that an individual can mitigate the effect of challenged statutory provisions or government action. I disagree with this submission.

[92] In *B.C. Health Services*, the Supreme Court did not find that every challenged statutory provision breached s. 2(d). Rather, it took issue with those provisions that both nullified significant collective provisions and then prohibited future bargaining on specific important issues.

[93] In this case, the Divisional Court recognized that the Unions' members have access to the construction labour relations regime when working for construction employers and the general LRA regime when working for non-construction employers. The issue is not that the Unions' members ought to "mitigate" the effects of a s. 127.2 declaration. Rather, the point is that s. 127.2 only restricts access to the construction industry regime, which is not protected by the *Charter*.

[94] The appellants argue that this reasoning is flawed. If the IESO hires construction workers in the future, they will be a different group of employees entirely, because the Unions' members will have lost access to work with the IESO. In effect, only non-union employees can possibly re-certify.

[95] I do not accept this submission. Construction contractors bound to the Unions' bargaining rights (the actual employers of the Unions' members) maintain the right to bid on construction services required by the IESO, if any. If the Unions' members are hired by the IESO in the future, there is a collective bargaining process open to them.

[96] In conclusion, a s. 127.2 declaration would not make it impossible for the Unions' members to meaningfully exercise the freedom to associate. There is no breach of s. 2(d) based on the evidentiary record in this case.

(4) Is the Board process a substitute for good faith consultation/negotiation?

[97] The appellants assert that the Divisional Court erred in holding that a process of adjudication before the Board is a substitute for good faith negotiation.

[98] It is unnecessary to decide this issue given my conclusion that the appellants have failed to demonstrate substantial interference with s. 2(d).

(5) If there is a breach, is it justified under s. 1?

[99] While I have found that there is no breach of s 2(d), for the sake of completeness I will briefly consider whether, if there were a breach, it would be justified under s. 1 of the *Charter*.

[100] The Supreme Court of Canada articulates the s. 1 *Oakes* test at para. 138 of *B.C. Health Services*:

> A limit on *Charter* rights must be prescribed by law to be saved under s. 1. Once it is determined that the limit is prescribed by law, then there are four components to the Oakes test for establishing that the limit is reasonably justifiable in a free and democratic society (*Oakes*, at pp. 138-40). First, the objective of the law must be pressing and substantial. Second, there must be a rational connection between the pressing and substantial objective and the means chosen by the law to achieve the objective. Third, the impugned law must be minimally impairing. Finally, there must be proportionality between the objective and the measures adopted by the law, and more specifically, between the salutary and deleterious effects of the law....

[101] The appellants submit that in this case: (i) there is no evidence of a pressing and substantial objective; (ii) s. 127.2 does not minimally impair *Charter* rights; and (iii) there is no proportionality between the effects of s. 127.2 and its objectives.

[102] Section 127.2 was part of a larger package of reforms intended to modernize Ontario's construction industry labour relations regime. According to the legislative debates, a primary purpose of the non-construction employer provisions was to reverse a line of Board cases. In its view, the Board had unduly expanded the scope of the construction industry regime to include employers who did not operate in the construction industry or provide construction services but instead utilized construction services for their own purposes. The Legislature determined that the specialized labour relations scheme had, because of this Labour Board jurisprudence, become too broadly applied and over-inclusive.

[103] The non-construction amendments were meant to permit employers whose primary business was not construction – for example, retail employers, municipalities and school boards – to negotiate agreements specific to the circumstances of their sector. A related purpose was to free these employers from being bound by province-wide agreements that they had little opportunity to influence.

[104] The Legislative debates reveal that another goal was to facilitate economic competition and work opportunities for unionized and non-unionized workers by opening up the tendering process.

[105] I reject the appellants' argument that the Divisional Court owed deference to the Board's determination that the evidence did not support a finding that the purpose of s. 127.2 is pressing and substantial. Rather, as noted by the Divisional Court, deference is owed to the policy choices made by a legislature in designing a labour relations regime, where there are difficult policy choices to be made between the interests of employers and employees and different unions. In my view, the legislative record supports the Divisional Court's conclusion that the objectives of s. 127.2 are pressing and substantial.

[106] The appellants do not dispute that the rational connection test is met.

[107] Moving then to the next prong of the *Oakes* test, the appellants contend that the Divisional Court erred in holding that s. 127.2 meets the minimal impairment test, as s. 127.2 not only removes non-construction employers from the construction industry regime but it also terminates its members' bargaining and collective agreements. Recertification under the general provisions of the LRA is illusory, say the appellants, since certification is not possible without direct hires.

[108] As noted by the Divisional Court, legislation will meet the minimal impairment test, in cases involving complex social issues, if the legislature has chosen one of several reasonable alternatives: *R.J.R.-MacDonald Inc. v. Canada (Attorney General)*, 1995 CanLII 64 (SCC), [1995] 3 S.C.R. 199.

[109] Under s. 127.2, an employer seeking a declaration that it is a non-construction employer must bring an application to the Board and show that it does no construction work for compensation from an unrelated person. I note that in a number of cases decided under the current definition of "non-construction employer", the Board has refused the employer's s. 127.2 application on the basis that it did not satisfy that definition.

[110] If a declaration is made, the specialized provisions of the construction industry regime cease to apply; the collective agreement bargained under that regime by a construction trade union on behalf of construction workers ceases to apply in so far as that employer is concerned; and the bargaining agent no longer has bargaining rights on behalf of the employer's construction employees. However, any employees of the non-construction employer are entitled to seek access to statutory protection for collective bargaining under the general LRA regime. Union members employed by other construction employers maintain their rights under the construction industry provisions. In my view, the minimal impairment test is met.

[111] Finally, the appellants submit that the Divisional Court erred in concluding that the salutary effects of the provision outweigh its deleterious effects. I see no reason to interfere with the Divisional Court's analysis on this point, at para. 98:

> While the Unions will lose the right to bargain with the IESO in the construction industry regime, they maintain their right to compete for any work opportunity created by the construction needs of the IESO or other consumers. Moreover, in the absence of s. 127.2, it appears that the IESO and other consumers of construction services would be bound forever by construction industry bargaining rights without any democratic mechanism to remove them.

[112] In conclusion, if there is a breach of s. 2(d), the *Oakes* test is satisfied.

E. DISPOSITION

[113] The appeal is dismissed. The respondents may make submissions as to costs in writing within 10 days of the release of these reasons. The appellants have 10 days to respond. There shall be no costs for or against the interveners.

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APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD DURING APRIL 2012

APPLICATIONS FOR CERTIFICATION

Bargaining Agents Certified Without Vote

1451-07-R: Labourers' International Union of North America, Ontario Provincial District Council (Applicant) v. Mirtren Contractors Limited, Mirtren Construction Limited (Respondent) v. Construction Workers Local 52, affiliated with the Christian Labour Association of Canada (Intervener)

Unit: "all construction labourers in the employ of Mirtren Construction Limited in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all construction labourers in the employ of Mirtren Construction Limited in all sectors of the construction industry in the City of Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham, excluding the industrial, commercial and institutional sector, save and except non-working forepersons and persons above the rank of non-working foreperson and save and except any person for whom another trade union held valid and subsisting bargaining rights as of July 23, 2007" (3 employees in unit)

2318-08-R: Labourers' International Union of North America, Ontario Provincial District Council (Applicant) v. HugoMark Construction an MTM Group Company (Respondent)

Unit: "all construction labourers in the employ of HugoMark Construction an MTM Group Company in the District of Kenora including the Patricia portion in all sectors of the construction industry, excluding the industrial, commercial and institutional sector, save and except non- working foremen and persons above the rank of non-working foreman" (8 employees in unit)

0815-10-R: United Association of Journeymen and Apprentices of The Plumbing and Pipefitting Industry of The United States and Canada, Local 46 (Applicant) v. Dependable Mechanical Systems Inc. (Respondent)

Unit: "all plumbers, plumbers' apprentices, pipefitters and pipefitters' apprentices in the employ of Dependable Mechanical Systems Inc. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all plumbers, plumbers' apprentices, pipefitters and pipefitters' apprentices in the employ of Dependable Mechanical Systems Inc. in all sectors of the construction industry in the City of Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (14 employees in unit)

1333-10-R: Labourers' International Union of North America, Ontario Provincial District Council (Applicant) v. Jamwood Developments Inc., Cinelli, Mario in Trust, Cintrex Property Management Inc., Surrey Construction Inc., A-Motion Accessible Lifestyle Solutions, A & M Woodworking, Mar Jam Investments Ltd. and, Surrey Plaza Limited (Respondent)

Unit: "all construction labourers in the employ of Jamwood Developments Inc. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all construction labourers in the employ of Jamwood Developments Inc. in all sectors of the construction industry in City of Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (6 employees in unit)

0645-11-R: The Restoration Council of Ontario (Applicant) v. Heritage Restoration Inc. (Respondent)

Unit: "all employees engaged in masonry restoration in the employ of Heritage Restoration Inc. in the City of Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham, in all sectors of the construction industry other than the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (8 employees in unit)

0917-11-R: Sheet Metal Workers International Association and its Affiliated Unions (Applicant) v. Morris Modular Space Inc. (Respondent)

Unit: "all sheet metal workers, sheet metal workers' apprentices, sheeters, sheeters' assistants and material handlers apprentices in the employ of Morris Modular Space Inc. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all sheet metal workers, sheet metal workers' apprentices, sheeters, sheeters' assistants and material handlers apprentices in the employ of Morris Modular Space Inc. in all sectors of the construction industry in that portion of the District of Cochrane north of the 50th parallel of latitude, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (3 employees in unit)

1788-11-R: The International Union of Painters and Allied Trades, Local Union 1891 (Applicant) v. Millstone Homes Inc. (Respondent)

Unit: "all painters and painters' apprentices in the employ of Millstone Homes Inc. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all painters and painters' apprentices in the employ of Millstone Homes Inc. in all sectors of the construction industry in the Counties of Oxford, Perth, Huron, Middlesex, Bruce and Elgin, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (4 employees in unit

3930-11-R: International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, Local 721 (Applicant) v. Jangho Curtain Wall Canada Co., Ltd. (Respondent) v. International Union of Painters and Allied Trades, Local 1819, Glaziers (Intervener)

Unit: "all iron workers and iron worker apprentices in the employ of Jangho Curtain Wall Canada Co., Ltd., in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all iron workers and iron worker apprentices in the employ of Jangho Curtain Wall Canada Co., Ltd., in all sectors of the construction industry in the City of Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non- working foreman" (18 employees in unit)

4045-11-R: Labourers' International Union of North America, Ontario Provincial District Council (Applicant) v. Pier Luigi Dolente Limited Robert De Fulviis Limited Orazio De Fulvis Investments Limited c.o.b. as Dolente Concrete & Drain CO (Respondent)

Unit 1: "all construction labourers in the employ of Pier Luigi Dolente Limited Robert De Fulviis Limited Orazio De Fulvis Investments Limited c.o.b. as Dolente Concrete & Drain Co in the City of Hamilton, the City of Burlington and that portion of the geographic Township of Beverly annexed by North Dumfries Township and that portion of the Town of Milton within the geographic Townships of Nassagaweya and Nelson, in all sectors of the construction industry other than the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (2 employees in unit)

4115-11-R: Labourers' International Union of North America, Ontario Provincial District Council (Applicant) v. Ron Lee Construction Inc. (Respondent)

Unit: "all construction labourers in the employ of Ron Lee Construction Inc. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all construction labourers in the employ of Ron Lee Engineering Inc. in all sectors of the construction industry in the Regional Municipality of Niagara and that portion of the Regional Municipality of Haldimand Norfolk coming within the former County of Haldimand, the City of Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham and the City of Hamilton, the City of Burlington and that portion of the geographic Township of Beverly annexed by North Dumfries Township and that portion of the Town of Milton within the geographic Townships of Nassagaweya and Nelson, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (11 employees in unit)

0013-12-R: The International Union of Painters and Allied Trades, Local Union 1891 (Applicant) v. 684468 Ontario Inc. o/a C & L Decorating & Painting (Respondent)

Unit: "all painters and painters apprentices in the employ of 684468 Ontario Inc. o/a C & L Decorating & Painting in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all painters and painters apprentices in the employ of 684468 Ontario Inc. o/a C & L Decorating & Painting in all sectors of the construction industry in the City of Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham and the City of Hamilton, the City of Burlington and that portion of the geographic Township of Beverly annexed by North Dumfries Township and that portion of the Town of Milton within the geographic Townships of Nassagaweya and Nelson, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (6 employees in unit)

0079-12-R: Universal Workers Union, Labourers' International Union of North America Local 183 (Applicant) v. Melody Homes and/or 813253 Ontario Corp. (Respondent)

Unit: "all construction labourers in the employ of Melody Homes and/or 813253 Ontario Corp. in all sectors of the construction industry in the Regional Municipality of Durham (except for the Towns of Ajax and Pickering), the geographic Township of Cavan in the County of Peterborough and the geographic Township of Manvers in the County of Victoria, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (3 employees in unit)

0084-12-R: Construction Workers Local 53, affiliated with Christian Labour Association of Canada (CLAC) (Applicant) v. Birnam Excavating Ltd. (Respondent)

Unit: "all construction labourers and employees engaged in the operation of cranes, shovels, bulldozers, or similar equipment and those engaged in repairing and maintaining of same, and employees engaged as surveyors in the employ of Birnam Excavating Ltd. in all sectors of the construction industry in the Counties of Lambton, Oxford, Perth, Huron, Middlesex, Bruce and Elgin, save and except non-working foremen and persons above the rank of non-working foreman" (22 employees in unit)

0109-12-R: Universal Workers Union, Labourers' International Union of North America Local 183 (Applicant) v. 1409661 Ontario Ltd. carrying on business as Saberwood Homes and/or, Saberwood Developments Inc. and/or, Saberwood Homes Armitage Inc. and/or, 1250259 Ontario Ltd. (Respondent)

Unit: "all construction labourers in the employ of 1409661 Ontario Ltd. carrying on business as Saberwood Homes and/or Saberwood Developments Inc. and/or Saberwood Homes Armitage Inc. and/or 1250259 Ontario Ltd. in all sectors of the construction industry in the Regional Municipality of Durham (except for the Towns of Ajax and Pickering), the geographic Township of Cavan in the County of Peterborough and the geographic Township of Manvers in the County of Victoria, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (2 employees in unit)

0136-12-R: International Brotherhood of Electrical Workers, Local 586 (Applicant) v. Gaetan Clement c.o.b. as Ace Electric (Respondent)

Unit: "all journeymen and apprentice electricians, journeymen and apprentice linemen, journeymen and apprentice network cabling specialists and communication cable installers in the employ of Gaetan Clement c.o.b. as Ace Electric in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all journeymen and apprentice electricians, journeymen and apprentice linemen, journeymen and apprentice network cabling specialists and communication cable installers in the employ of Gaetan Clement c.o.b. as Ace Electric in all sectors of the construction industry in the City of Ottawa and the United Counties of Prescott and Russell and the United Counties of Stormont Dundas and Glengarry, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (7 employees in unit)

0173-12-R: Labourers' International Union of North America, Ontario Provincial District Council (Applicant) v. HS Cole Contracting & Excavating Ltd. (Respondent)

Unit: "all construction labourers in the employ of HS Cole Contracting & Excavating Ltd. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all construction labourers in the employ of HS Cole Contracting & Excavating Ltd. in all sectors of the construction industry in the Regional Municipality of Niagara and that portion of the Regional Municipality of Haldimand-Norfolk coming within the former County of Haldimand, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (2 employees in unit)

0177-12-R: Christian Labour Association of Canada (Applicant) v. Mike McGinn Weed Control 2004 (2004) Ltd. (Respondent)

Unit: "all construction labourers in the employ of Mike McGinn Weed Control 2004 (2004) Ltd. In all sectors of the construction industry in the County of Peterborough (except for the geographic Township of Cavan), the County of Victoria (except for the geographic Township of Manvers) and the provisional County of Haliburton, save and except non-working foremen and persons above the rank of non-working foreman" (3 employees in unit)

0185-12-R: Universal Workers Union, Labourers' International Union of North America Local 183 (Applicant) v. Ballymore Management Group Inc. and Ballymore Homes Corporation (Respondent)

Unit: "all construction labourers in the employ of Ballymore Management Group Inc. in all sectors of the construction industry in the City of Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of

Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non working foreman" (3 employees in unit)

Bargaining Agents Certified Subsequent to Vote

3111-11-R: U.F.C.W. Local 333 (Applicant) v. Primary Response Incorporated (Respondent)

Unit: "all employees of Primary Response Incorporated employed as security guards at Union Station, 65 Front Street West Toronto, Ontario, save and except supervisors, mobile supervisors, managers and persons above the rank of manager" (24 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	23
Number of persons who cast ballots	14
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	11
Number of segregated ballots cast by persons whose names appear on voter's list	3
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	8
Number of ballots marked against applicant	3
Number of ballots segregated and not counted	3

3636-11-R: United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (United Steelworkers) (Applicant) v. Agora Manufacturing Inc. (Respondent)

Unit: "all employees of Agora Manufacturing Inc. in the City of Mississauga, save and except supervisors and persons above the rank of supervisor, office, clerical and sales staff" (41 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	41
Number of persons who cast ballots	40
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	29
Number of segregated ballots cast by persons whose names appear on voter's list	16
Number of segregated ballots cast by persons whose names do not appear on voters' list	4
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	28
Number of ballots marked against applicant	12
Number of ballots segregated and not counted	0

3666-11-R: Operative Plasterers' and Cement Masons' International Association of the United States and Canada Local Union 598 (Applicant) v. Gibson Restoration Inc. (Respondent) v. Brick and Allied Craft Union of Canada (Intervener)

Unit: "all masonry restoration employees employed by Gibson Restoration Inc. in all sectors of the construction industry in the Province of Ontario, and all masonry restoration employees employed by Gibson Restoration Inc. in maintenance work in the Province of Ontario, save and except persons covered by a subsisting collective agreement with the Operative Plasterers' and Cement Masons' International Association, and save and except non-working foremen and persons above the rank of non-working foreman" (4 employees in unit)

3669-11-R: Operative Plasterers' and Cement Masons' International Association of the United States and Canada Local Union 598 (Applicant) v. 1214592 Ontario Limited c.o.b. as Colonial Building Restoration (Respondent) v. Brick and Allied Craft Union of Canada (Intervener)

Unit: "all masonry restoration employees employed by 1214592 Ontario Limited c.o.b. as Colonial Restoration in all sectors of the construction industry in the Province of Ontario, and all masonry restoration employees employed by 1214592 Ontario Limited c.o.b. as Colonial Restoration in maintenance work in the Province of Ontario, save and except persons covered by a subsisting collective agreement with the Operative Plasterers' and Cement Masons' International Association, Local 598, and save and except non-working foremen and persons above the rank of non-working foreman" (3 employees in unit)

Number of names of persons on revised voters' list	3
Number of persons who cast ballots	3
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names appear on voter's list	3
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	3
Number of ballots marked against applicant	0
Number of ballots segregated and not counted	0

3818-11-R: Service Employees International Union Local 2, Brewery, General & Professional Workers' Union (Applicant) v. Amphora Maintenance Services Inc. (Respondent)

Unit: "all employees of Amphora Maintenance Services Inc., employed at 8 and 10 King St East in the City of Toronto, save and except supervisors and those above the rank of supervisor" (10 employees in unit)

3855-11-R: Universal Workers Union, Labourers' International Union of North America Local 183 (Applicant) v. Facility Services Corporation and/or, Accurate Facility Services Corp. (Respondent)

Unit: "all employees of Facility Services Corporation and/or Accurate Facility Services Corp. engaged in cleaning and maintenance at 100, 200 and 300 Consilium Place, in the Municipality of Metropolitan Toronto, save and except Supervisors, persons above the rank of Supervisor, office and clerical staff and students employed during the school vacation period" (32 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	0
Number of persons who cast ballots	30
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	30
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	30
Number of ballots marked against applicant	0
Number of ballots segregated and not counted	0

3856-11-R: Universal Workers Union, Labourers' International Union of North America Local 183 (Applicant) v. Tip Top Cleaning Services an affiliation of Kazemi Enterprises Inc. (Respondent)

Unit: "all of the employees of Tip Top Cleaning Services an affiliation of Kazemi Enterprises Inc. employed at 10 and 20 Guildwood Parkway, in the City of Toronto save and except Supervisors, persons above the rank of Supervisor, office and clerical staff" (4 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	4
Number of persons who cast ballots	4
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	4
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	4
Number of ballots marked against applicant	0
Number of ballots segregated and not counted	0

3908-11-R: Communications, Energy and Paperworkers Union of Canada (Applicant) v. Union of Solicitor General Employees (Respondent) v. The Alliance Employees' Union (Unit IV) (Intervener)

Unit: "all employees of the Union of Solicitor General Employees employed in National Office of the Union of Solicitor General Employees save and except operations manager, senior labour relations officer and the executive assistant to the National President and the senior labour relations officer" (12 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	13
Number of persons who cast ballots	10
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	10
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	9
Number of ballots marked against applicant	1
Number of ballots segregated and not counted	0

3936-11-R: Labourers' International Union of North America, Local 506 (Applicant) v. Choice Wall Installations Inc. (Respondent)

Unit: "all employees of the Choice Wall Installations Inc. working in and out of the Choice Wall Installations Inc.'s yards in the Province of Ontario, save and except non-working supervisors, persons above the rank of non-working supervisor, and sales department, office and clerical staff." (9 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	9
Number of persons who cast ballots	9
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	9
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0

Number of spoiled ballots	0
Number of ballots marked in favour of applicant	9
Number of ballots marked against applicant	0
Number of ballots segregated and not counted	0

3938-11-R: Ontario Nurses' Association (Applicant) v. Blackadar Continuing Care Centre (Respondent)

Unit: "all Registered Nurses, Registered Practical Nurses and Nurses with a Temporary Certificate of Registration engaged in a nursing capacity at Blackadar Continuing Care Centre in the Town of Dundas, Ontario save and except those above the rank of Assistant Director of Care." (17 employees in unit)

Number of names of persons on revised voters' list	20
Number of persons who cast ballots	15
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	12
Number of segregated ballots cast by persons whose names appear on voter's list	3
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	11
Number of ballots marked against applicant	1
Number of ballots segregated and not counted	3

3951-11-R: Canadian Office and Professional Employees Union Local 343 (Applicant) v. CardioMed Supplies Inc. (Respondent)

Unit: "all employees employed by CardioMed Supplies Inc. in the City of Kawartha Lakes, save and except accountants, supervisors and those above the rank of supervisor" (20 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	27
Number of persons who cast ballots	27
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	19
Number of segregated ballots cast by persons whose names appear on voter's list	7
Number of segregated ballots cast by persons whose names do not appear on voters' list	1
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	13
Number of ballots marked against applicant	6
Number of ballots segregated and not counted	8

3999-11-R: Canadian Union of Public Employees (Applicant) v. Africans in Partnership Against Aids (A.P.A.A.) (Respondent)

Unit: "all employees employed by Africans in Partnership Against AIDS (A.P.A.A.) in the City of Toronto, save and except managers and persons above the rank of manager." (8 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	16
Number of persons who cast ballots	12
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	11

Number of segregated ballots cast by persons whose names appear on voter's list	1
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	11
Number of ballots marked against applicant	0
Number of ballots segregated and not counted	1

4010-11-R: Health Care and Service Workers Union, Local 304 affiliated with the Christian Labour Association of Canada (Applicant) v. King Gardens Retirement Residence (Respondent) v. Service Employees International Union, Local 1 (SEIU) (Intervener)

Unit: "all employees of King Gardens Retirement Residence in the City of Mississauga, save and except supervisors and persons above the rank of supervisors" (92 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	91
Number of persons who cast ballots	48
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	45
Number of segregated ballots cast by persons whose names appear on voter's list	2
Number of segregated ballots cast by persons whose names do not appear on voters' list	1
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	43
Number of ballots marked against applicant	4
Number of ballots segregated and not counted	1

4017-11-R: Ontario Nurses' Association (Applicant) v. London Health Sciences Centre (Respondent)

Unit: "all Registered Nurses and Registered Nurses with a Temporary Certificate of Registration employed by London Health Sciences Centre at University Hospital, in a nursing capacity, at London, Ontario, save and except Advanced Nurse-Practitioners/Clinical Nurse Specialists, Coordinators persons above the rank of Coordinator and employees covered by subsisting collective agreements" (1125 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	1257
Number of persons who cast ballots	901
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	869
Number of segregated ballots cast by persons whose names appear on voter's list	2
Number of segregated ballots cast by persons whose names do not appear on voters' list	30
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	560
Number of ballots marked against applicant	312
Number of ballots segregated and not counted	29

4059-11-R: Service Employees International Union, Local 2 Brewery, General, and Professional Workers' Union (Applicant) v. Evripos Janitorial Services Limited (Respondent)

Unit: "all employees of Evripos Janitorial Services Limited working at CFB Ottawa - Uplands, 4581 Uplands Drive, in the City of Ottawa, save and except supervisors and those above the rank of supervisor" (6 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	7
Number of persons who cast ballots	7
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	6
Number of segregated ballots cast by persons whose names appear on voter's list	1
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	4
Number of ballots marked against applicant	2
Number of ballots segregated and not counted	1

4076-11-R: National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada) (Applicant) v. Blackadar Continuing Care Centre (Respondent)

Unit: "all employees at Blackadar Continuing Care Centre in Dundas, City of Hamilton, save and except Supervisors, those above the rank of Supervisor, Registered Practical Nurses, Registered Nurses, Nurses with a temporary certificate of registration engaged in a nursing capacity, Director of Care and those above the rank of Director of Care, office and clerical staff" (85 employees in unit)

Number of names of persons on revised voters' list	94
Number of persons who cast ballots	53
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	50
Number of segregated ballots cast by persons whose names appear on voter's list	2
Number of segregated ballots cast by persons whose names do not appear on voters' list	1
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	47
Number of ballots marked against applicant	4
Number of ballots segregated and not counted	2

0034-12-R: Service Employees International Union, Local 2 Brewery, General, and Professional Workers' Union (Applicant) v. Hallmark Housekeeping Services Inc. (Respondent)

Unit: "all employees of Hallmark Housekeeping Services Inc., working at 3000 and 3100 Steeles Ave East in the City of Markham, save and except supervisors and those above the rank of supervisor" (6 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	9
Number of persons who cast ballots	6
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	6
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	6
Number of ballots marked against applicant	0
Number of ballots segregated and not counted	0

Applications for Certification Dismissed Subsequent to Vote

2724-10-R: Labourers' International Union of North America, Ontario Provincial District Council (Applicant) v. The Sanderson-Harold Company Limited (Respondent)

Unit: "all carpenters and carpenters' apprentices and construction labourers in the employ of the responding party in the City of Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham and the City of Hamilton, the City of Burlington, that portion of the geographic Township of Beverly annexed by North Dumfries Township and that portion of the Town of Milton within the geographic Townships of Nassagaweya and Nelson, in all sectors of the construction industry, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (15 employees in unit)

Number of names of persons on revised voters' list	17
Number of persons who cast ballots	14
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	14
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	0
Number of ballots marked against applicant	14
Number of ballots segregated and not counted	0

3619-11-R: Labourers' International Union of North America, Local 625 (Applicant) v. Front Construction Industries Inc. (Respondent) v. United Brotherhood of Carpenters and Joiners of America, Local 494 (Intervener)

Unit: "all employees in the employ of Front Construction Industries Inc. in all sectors of the construction industry in the Counties of Essex and Kent, save and except the industrial, commercial and institutional sector and save and except non-working foremen and persons above the rank of non-working foremen" (4 employees in unit)

3911-11-R: Canadian Union of Public Employees (Applicant) v. Corporation of the Township of North Glengarry (Respondent)

Unit: "all clerical and office employees employed by the Corporation of the Township of North Glengarry in Alexandria, ON, save and except Managers and persons above the rank of Manager and any employee already represented by a trade union." (12 employees in unit)

Number of names of persons on revised voters' list	12
Number of persons who cast ballots	12
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	9
Number of segregated ballots cast by persons whose names appear on voter's list	3
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	5
Number of ballots marked against applicant	6
Number of ballots segregated and not counted	1

4005-11-R: United Food and Commercial Workers International Union, Local 175 (Applicant) v. The Original Cakerie (Respondent)

Unit: "all employees of The Original Cakerie in the City of London, save and except supervisors, persons above the rank of supervisor, office quality assurance, sales and technical staff." (134 employees in unit)

Number of names of persons on revised voters' list	148
Number of persons who cast ballots	132
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	129
Number of segregated ballots cast by persons whose names appear on voter's list	2
Number of segregated ballots cast by persons whose names do not appear on voters' list	1
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	59
Number of ballots marked against applicant	70
Number of ballots segregated and not counted	3

4022-11-R: Ontario Public Service Employees Union (Applicant) v. Rehabilitation Foundation for the Disabled o/a Ontario March of Dimes (Respondent)

Unit: "all employees of the Rehabilitation Foundation for the Disabled o/a Ontario March of Dimes - St. John Place in the City of Hamilton, save and except managers and those above the rank of manager" (15 employees in unit)

Number of names of persons on revised voters' list	14
Number of persons who cast ballots	13
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	13
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	6
Number of ballots marked against applicant	7
Number of ballots segregated and not counted	0

4075-11-R: National Automobile, Aerospace, Transportation and General Workers' Union of Canada (CAW-Canada) (Applicant) v. Arzon Limited (Respondent)

Unit: "all employees of Arzon Ltd. in the City of Burlington save and except Supervisors, those above the rank of Supervisors, Technical, Sales, Office and Clerical Staff" (31 employees in unit)

Number of names of persons on revised voters' list	35
Number of persons who cast ballots	34
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	30
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	4
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	12
Number of ballots marked against applicant	18
Number of ballots segregated and not counted	4

Applications for Certification Withdrawn

1895-04-R: Central Ontario Regional Council of Carpenters, Drywall and Allied Workers, United Brotherhood of Carpenters and Joiners of America (Applicant) v. B. Gottardo Construction Ltd. (Respondent) v. Labourers' International Union of North America, Ontario Provincial District Council, Universal Workers Union, Labourers' International Union of North America, Local 183, Labourers' International Union of North America - CNE - Canada Regional Office, Hydro One Networks Inc., Electrical Power Systems Construction Association ("EPSCA") (Intervener)

1402-11-R: Labourers' International Union of North America, Local 625 (Applicant) v. Nasci Construction Ltd. (Respondent)

2633-11-R: Canadian Construction Workers Union (Applicant) v. Acu Contracting Ltd. (Respondent) v. Universal Workers Union, Labourers' International Union of North America Local 183 (Intervener)

3346-11-R: National Organized Workers (Applicant) v. City Clean Ontario (Respondent)

0072-12-R: Healthcare, Office and Professional Employees Union, Local 2220, UBCJA (Applicant) v. St. Catharines Facility Inc. o/a The Royal Henley Retirement Residence (Respondent)

APPLICATIONS FOR DECLARATION OF RELATED EMPLOYER

1779-08-R: United Brotherhood of Carpenters and Joiners of America, Local 397 (Applicant) v. Zanette & Almeida Plastering Company Limited and, Quinte Drywall Ltd. (Respondent) *(Dismissed)*

2487-08-R: United Food and Commercial Workers International Union, Local 175 (Applicant) v. Port Colborne Poultry Limited., 1351599 Ontario Inc. and, Riverview Poultry Limited, 1430000 Ontario Inc., Niagara Country Fresh Poultry 2003 Inc. (Respondent) *(Withdrawn)*

2928-08-R: International Union of Painters and Allied Trades, Local 1891 (Applicant) v. Zanette & Almeida Plastering Company Limited and, Quinte Drywall Ltd. and, Zanette Drywall Company Limited (Respondent) *(Dismissed)*

0654-10-R: Labourers' International Union of North America, Ontario Provincial District Council (Applicant) v. Thorium Contracting Ltd.., Samuell Contracting and, Cameron Pikul (Respondent) *(Withdrawn)*

1554-10-R: United Food and Commercial Workers Canada, Local 175 (Applicant) v. Cangro Vegetables Inc., Hensall District Co-Operative (Respondent) *(Withdrawn)*

2611-10-R: National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada) and its Local 252 (Applicant) v. Freightliner of Canada Ltd. and, Mercedes-Benz Canada Inc. (Respondent) *(Withdrawn)*

2604-11-R: United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 853 - Sprinkler Fitters of Ontario (Applicant) v. Depend-All Fire Systems Inc. and, Fire Protection Solutions Inc. (Respondent) *(Granted)*

3313-11-R: United Brotherhood of Carpenters and Joiners of America, Local 2041 (Applicant) v. Expertcom Construction Inc., 7772041 Canada Inc. (Respondent) *(Granted)*

4094-11-R: The Carpenters' District Council of Ontario, United Brotherhood of Carpenters and Joiners of America On its own behalf and on behalf of its constituent union, Local 1946 (Applicant) v. Middlesex

Drywall Ltd., Niekohr Holdings Inc., Bernie Duewel o/a BKD Interiors and, Tri-County Interiors Inc. (Respondent) *(Granted)*

3518-11-R: Universal Workers Union, Labourers' International Union of North America Local 183 (Applicant) v. Baywood Carpentry & General Contracting Ltd. and/or, 2130869 Ontario Ltd. (Respondent) *(Granted)*

SALE OF A BUSINESS

1779-08-R: United Brotherhood of Carpenters and Joiners of America, Local 397 (Applicant) v. Zanette & Almeida Plastering Company Limited and, Quinte Drywall Ltd. (Respondent) *(Dismissed)*

2487-08-R: United Food and Commercial Workers International Union, Local 175 (Applicant) v. Port Colborne Poultry Limited., 1351599 Ontario Inc. and, Riverview Poultry Limited, 1430000 Ontario Inc., Niagara Country Fresh Poultry 2003 Inc. (Respondent) *(Withdrawn)*

2928-08-R: International Union of Painters and Allied Trades, Local 1891 (Applicant) v. Zanette & Almeida Plastering Company Limited and, Quinte Drywall Ltd. and, Zanette Drywall Company Limited (Respondent) *(Dismissed)*

0654-10-R: Labourers' International Union of North America, Ontario Provincial District Council (Applicant) v. Thorium Contracting Ltd.., Samuell Contracting and, Cameron Pikul (Respondent) *(Withdrawn)*

1554-10-R: United Food and Commercial Workers Canada, Local 175 (Applicant) v. Cangro Vegetables Inc., Hensall District Co-Operative (Respondent) *(Withdrawn)*

2611-10-R: National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada) and its Local 252 (Applicant) v. Freightliner of Canada Ltd. and, Mercedes-Benz Canada Inc. (Respondent) *(Withdrawn)*

2604-11-R: United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 853 - Sprinkler Fitters of Ontario (Applicant) v. Depend-All Fire Systems Inc. and, Fire Protection Solutions Inc. (Respondent) *(Granted)*

3204-11-R: WoodGreen Community Services (Applicant) v. Workers United Ontario Council, Local 154 and, Universal Workers Union Labourers' International Union of North America, Local 183 (Respondent) v. Healthcare, Office and Professional Employees Union, Local 2220, UBCJA (Intervener) *(Endorsed Settlement)*

3313-11-R: United Brotherhood of Carpenters and Joiners of America, Local 2041 (Applicant) v. Expertcom Construction Inc., 7772041 Canada Inc. (Respondent) *(Granted)*

3518-11-R: Universal Workers Union, Labourers' International Union of North America Local 183 (Applicant) v. Baywood Carpentry & General Contracting Ltd. and/or, 2130869 Ontario Ltd. (Respondent) *(Granted)*

3791-11-R: National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada), Local 2458 (Applicant) v. Windsor Regional Hospital, Glengarda Child and Family Services (Respondent) v. Ontario Public Service Employees Union (Intervener) (Endorsed Settlement)

4094-11-R: The Carpenters' District Council of Ontario, United Brotherhood of Carpenters and Joiners of America On its own behalf and on behalf of its constituent union, Local 1946 (Applicant) v. Middlesex

Drywall Ltd., Niekohr Holdings Inc., Bernie Duewel o/a BKD Interiors and, Tri-County Interiors Inc. (Respondent) *(Granted)*

APPLICATIONS FOR DECLARATION TERMINATING BARGAINING RIGHTS

0106-10-R: Employees of Kidd Mechanical Inc. represented by Vikki Schlonies (Applicant) v. Ontario Pipe Trades Council of the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, on its own behalf and on behalf of all of its affiliated bargaining agents (Respondent) v. Kidd Mechanical Inc. (Intervener) *(Endorsed Settlement)*

Unit: "all qualified and/or certified journeymen and apprentice plumbers, steamfitters, pipefitters, welders, and working foremen employed by Kidd Mechanical Inc. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, save and except non-working foremen and persons above that rank." (4 employees in unit)

0173-10-R: Tony Lunardo and, Nixon Brown (Applicant) v. United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 46,, Ontario Pipe Trades Council of the United Association of Journeymen and Apprentices of the Plumbing and Pipefiting Industry of the United States and Canada and, Plumbers Residential Council, Ontario (Respondent) v. Lunardo Plumbing Inc. (Intervener) *(Granted)*

Unit: "The employer recognizes Local 46, Low Rise Residential Division as the exclusive bargaining agent for all plumbers and plumbers' apprentices in the employ of the Employer in the construction industry in the Municipalities of Metropolitan Toronto, the Regional Municipalities of Peel an York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, the portion of the Regional Municipality of Durham lying west of Durham Regional Road 23 from Lake Ontario to Lake Simcoe and including the Town of Ajax, the Town of Pickering, Uxbridge Township and Georgina Township, excluding the industrial, commercial and institutional sector of the construction industry, save and except non-working foremen and persons above the rank of non-working foreman. In addition to the recognition provided for in article 2.01 of the Collective Agreement, on behalf of its members, the Employer recognizes Local 46 as the sole and exclusive bargaining agent for all plumbers and plumbers' apprentices employed by such member contractors in Board Areas 5, 6, 7, 9, 10, 11, 18, 26 and 27 in the low-rise portion of the residential sector of the construction industry, save and except non-working forepersons and persons above the rank of non-working foreperson and employees already covered by subsisting bargaining rights or collective agreements which have not been abandoned as of the date hereof. All field personnel of Lunardo Plumbing Inc. in the High-Rise Residential Division, save and except Superintendents and persons above the rank of Superintendent. All journeymen and apprentice plumbers, steamfitters, pipefitters, welders, employed by Lunardo Plumbing Inc. in residential construction and non-construction maintenance and service work in the Province of Ontario, save and except forepersons above the rank of non-working forepersons. All qualified and/or certified journeymen and apprentice plumbers, steamfitters, pipefitters, welders, and working foremen employed by Lunardo Plumbing Inc. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, save and except non-working foremen and persons above that rank." (5 employees in unit)

0366-10-R: Dick Bokma (Applicant) v. Labourers International Union of North America Local 837 and the LIUNA Ontario Provincial District Council (Respondent) *(Granted)*

Unit: "all construction labourers in the employ of Niacon Limited in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, save and except non-working foremen and persons above the rank of non-working foreman." (2 employees in unit)

Number of names of persons on revised voters' list	3
Number of persons who cast ballots	3

Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names appear on voter's list	3
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of respondent	0
Number of ballots marked against respondent	3
Number of ballots segregated and not counted	0

3206-10-R: Rob Fawcett (Applicant) v. Labourers' International Union of North America Local 1059 (Respondent) v. Weathertech Restoration Services Inc. (Intervener) *(Withdrawn)*

Unit: "all its construction labourers engaged on all construction projects within the Counties of Middlesex, Bruce, Elgin, Oxford, Perth and Huron, save and except non-working foremen and persons above the rank of non-working foremen, office and clerical staff and engineering staff." (12 employees in unit)

Number of names of persons on revised voters' list	14
Number of persons who cast ballots	13
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names appear on voter's list	12
Number of segregated ballots cast by persons whose names do not appear on voters' list	1

3182-11-R: E. O'Hara & A Group of Employees of Alumicor Limited (Applicant) v. United Steelworkers of America (Respondent) v. Alumicor Limited (Intervener) *(Dismissed)*

Unit: "all employees at Alumicor Limited in the Municipality of Metropolitan Toronto, save and except supervisors, persons above the rank of supervisor, clerical, technical, sales staff and students employed during the school vacation period" (80 employees in unit)

3990-11-R: Joseph J. Veronyak (Applicant) v. Teamsters Local Union 938 (Respondent) v. Armbro Transport Inc. (Intervener) *(Granted)*

Unit: "The company recognizes the union as a source bargaining agent for its maintenance employees employed in its repair garage in Mississauga, Ontario or any new location within thirty (30) miles of Metropolitan Toronto, save and except foremen and persons above the rank of foreman, office and sales staff, dispatchers, persons regularly employed for not more than twenty-four (24) hours per week, students employed during the school vacation periods and persons covered by subsisting agreements." (3 employees in unit)

Number of names of persons on revised voters' list	3
Number of persons who cast ballots	3
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	3
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of respondent	0
Number of ballots marked against respondent	3
Number of ballots segregated and not counted	0

0069-12-R: Patrizia Falsetto (Applicant) v. Hospitality and Service Trades Union, Local 261 (Respondent) v. Royal Host Limited Partnership c.o.b. as Travelodge Ottawa Hotel and Conference Centre (Intervener) *(Dismissed)*

COMPLAINTS OF UNFAIR LABOUR PRACTICE

0098-06-U; 0099-06-U: Labourers' International Union of North America, Local 1081 (Applicant) v. Labourers' International Union of North America, Central and Eastern Canada Regional Office; Labourers' International Union of North America, Ontario Provincial District Council (Respondent) *(Dismissed)*

1484-07-U: Labourers' International Union of North America, Ontario Provincial District Council (Applicant) v. Mirtren Contractors Limited (Respondent) *(Withdrawn)*

1188-08-U: Prunella Morris (Applicant) v. Service Employees International Union Local 1 (Respondent) *(Dismissed)*

2486-08-U: United Food and Commercial Workers International Union, Local 175 (Applicant) v. Port Colborne Poultry Limited,, 1351599 Ontario Inc. and, Riverview Poultry Limited, 1430000 Ontario Inc., Niagara Country Fresh Poultry 2003 Inc. (Respondent) *(Withdrawn)*

0011-10-U: Catherine Rankin (Applicant) v. United Food and Commercial Workers Canada, Local 1000A (Respondent) *(Withdrawn)*

0986-10-U; 1133-10-U: United Association of Journeymen and Apprentices of The Plumbing and Pipefitting Industry of The United States and Canada, Local 46 (Applicant) v. Dependable Mechanical Systems Inc. (Respondent); Dependable Mechanical Systems Inc. (Applicant) v. United Association of Journeymen and Apprentices of The Plumbing and Pipefitting Industry of The United States and Canada, Local 46 (Respondent) *(Terminated)*

1673-10-U: Canadian Office and Professional Employees Union, Local 343 (Applicant) v. Auto Workers Community Credit Union Limited (Respondent) *(Withdrawn)*

3399-10-U: International Association of Machinists and Aerospace Workers, Local 771 and International Brotherhood of Electrical Workers, Local 1744 (Applicant) v. AbitibiBowater (Respondent) *(Withdrawn)*

1508-11-U: Labourers' International Union of North America, Local 625 (Applicant) v. Nasci Construction Ltd. (Respondent) *(Withdrawn)*

1525-11-U: Canadian Union of Public Employees (Applicant) v. The Corporation of the Municipality of Powassan (Respondent) *(Withdrawn)*

2410-11-U; 2878-11-U: International Union of Operating Engineers, Local 793 (Applicant) v. PLS Landscaping and Excavation Ltd. (Respondent) *(Withdrawn)*

2513-11-U: Ontario Public Service Employees Union (Applicant) v. Community Living Lennox and Addington (Respondent) *(Withdrawn)*

2583-11-U: Mohamed Rishard Anver Nassar (Applicant) v. CAW Canada Local 414 (Respondent) v. Metro Ontario Inc. (Intervener) *(Dismissed)*

2618-11-U: United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (United Steelworkers) (Applicant) v. Alumicor Limited (Respondent) *(Dismissed)*

2790-11-U: Service Employees International Union Local 1 Canada (Applicant) v. Oakdale Child and Family Services Inc. (Respondent) *(Withdrawn)*

2794-11-U: Ricky Mohammed (Applicant) v. Amalgamated Transit Union, Local 113 (Respondent) v. Toronto Transit Commission (Intervener) *(Dismissed)*

3068-11-U: Nicole Woodruff (Applicant) v. Canadian Union of Public Employees (Respondent) v. Cimetière notre-Dame (Intervener) *(Withdrawn)*

3143-11-U: Employees of Kidd Mechanical Inc., represented by Vikki Schlonies (Applicant) v. United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, and, United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, Local 527,, Ontario Pipe Trades Council and, Chris Riehl and, Russ Jessop (Respondent) v. Kidd Mechanical Inc. (Intervener) *(Endorsed Settlement)*

3228-11-U: The Canadian Union of Public Employees (Applicant) v. Board of Governors of Exhibition Place (Respondent) *(Withdrawn)*

3301-11-U; 3332-11-U: U.F.C.W. Local 333 (Applicant) v. Primary Response Inc. (Respondent); Primary Response Incorporated (Applicant) v. United Food and Commercial Workers International Union, Local 333 (Respondent) *(Withdrawn)*

3309-11-U: UNITE HERE Local 75 (Applicant) v. Grand Toronto Venture L.P., A Delaware Limited Partnership doing business as Park Hyatt Toronto (Respondent) *(Withdrawn)*

3385-11-U: William Russell Stephens (Applicant) v. Ontario Secondary School Teachers' Federation (Respondent) *(Dismissed)*

3439-11-U: Bryan Hagen (Applicant) v. International Brotherhood of Teamsters Teamsters Local Union No. 938 (Respondent) v. TST Overland Express (Intervener) *(Terminated)*

3552-11-U: Bobby Saini (Applicant) v. Canadian National Federation of Independent Union (CNFIU), (Affiliated Union - Labourers International Union of North America - LIUNA) (Respondent) *(Dismissed)*

3603-11-U: National Organized Workers (Applicant) v. City Clean Ontario (Respondent) *(Withdrawn)*

3640-11-U: Wayne Cunningham (Applicant) v. United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (United Steelworkers), Local 9042-101 (Respondent) v. Linde Canada Limited (Intervener) *(Dismissed)*

3663-11-U: International Brotherhood of Electrical Workers, Local 1739 (Applicant) v. Horse Power Electrical Maintenance and Contracting Corporation (Respondent) *(Withdrawn)*

3683-11-U: Kelly Tanedo Cruz (Applicant) v. United Food & Commercial Workers Canada, Local 175 (Respondent) v. Fearmans Pork Inc. (Intervener) *(Withdrawn)*

3686-11-U: Ontario Nurses' Association (Applicant) v. Toronto Grace Health Centre (Respondent) *(Withdrawn)*

3803-11-U: Robert B. Cameron (Applicant) v. CAW Local 222 (Respondent) v. Armada Tool Works Ltd. (Intervener) *(Withdrawn)*

3805-11-U: Ontario Public Employees Unions (Applicant) v. St. Elizabeth, Community Crisis Response Program (Toronto) (Respondent) *(Endorsed Settlement)*

3825-11-U: Service Employees International Union Local 2, Brewery, General & Professional Workers' Union (Applicant) v. Amphora Maintenance Services Inc. (Respondent) *(Withdrawn)*

3838-11-U: Rose De Sousa (Applicant) v. C.U.P.E. Local 5001 (Respondent) v. Toronto Western Hospital (Intervener) *(Dismissed)*

3848-11-U: Universal Workers Union Labourers' International Union of North America, Local 183 (Applicant) v. Euro Homes Buildings Inc (Respondent) *(Granted)*

3889-11-U: Canadian Union of Public Employees, Local 79 (Applicant) v. City of Toronto (Respondent) *(Withdrawn)*

3952-11-U; 3953-11-U; 3954-11-U: Ontario Public Employees Unions (Applicant) v. St. Elizabeth, Community Crisis Response Program (Toronto) (Respondent) *(Withdrawn)*

3959-11-U: Schneider Employees' Association (Applicant) v. Maple Leaf Consumer Foods AYR Ontario (Respondent) *(Withdrawn)*

4057-11-U: Canadian Union of Public Employees Local 4207-03 (Applicant) v. Brock University (Respondent) *(Withdrawn)*

0012-12-U: Taylor Hadyma (Applicant) v. International Association of Bridge, Structural and Ornamental Iron Workers, Local Union 759 (Respondent) *(Withdrawn)*

0125-12-U: Ontario Public Service Employees Union, Local 455 (Applicant) v. Bridge Street Retirement Residence (Respondent) *(Withdrawn)*

APPLICATION FOR INTERIM ORDER

0075-12-M: Service Employees International Union, Local 1 Canada (Applicant) v. Sunrise of Aurora (Respondent) *(Withdrawn)*

JURISDICTIONAL DISPUTES

1873-03-JD: International Association of Bridge, Structural Ornamental and Reinforcing Iron Workers, Local 736 (Applicant) v. United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 67 and, Kvaerner Constructors Ltd. (Respondent) *(Dismissed)*

2172-11-JD: Bondfield Construction Company Limited (Applicant) v. Labourers' International Union of North America, Local 506, International Union of Painters and Allied Trades, District Council 46, Stonhard Division, RPM Canada (Respondent) *(Dismissed)*

2257-11-JD: Helical Pier Systems (Applicant) v. International Union of Operating Engineers, Local 793 and, Labourers' International Union of North America, Local 247 and, Labourers' International Union of North America, Local 527 (Respondent) *(Withdrawn)*

3065-11-JD: PLS Landscaping and Excavation Ltd. (Applicant) v. International Union of Operating Engineers, Local 793, Labourers' International Union of North America, Local 1059 (Respondent) *(Withdrawn)*

COMPLAINTS UNDER THE OCCUPATIONAL HEALTH AND SAFETY ACT

2903-11-OH: Steve Blanchard (Applicant) v. Turkstra Industries Inc. (Respondent) *(Withdrawn)*

3343-11-OH: Dan Maki (Applicant) v. City of Greater Sudbury (Respondent) *(Dismissed)*

3672-11-OH: Daryl William Sanderson (Applicant) v. Jim Brown, Brett Brown, Jim Harrington, and Dave Hie 662117 Ontario Inc. o/a Jim Brown and Sons Trucking (Respondent) *(Withdrawn)*

3676-11-OH: Robert Gallwey (Applicant) v. 2264403 Ontario Inc. (Respondent) *(Withdrawn)*

3854-11-OH: Horain Bennett (Applicant) v. GFL Environmental East Corporation (Respondent) *(Withdrawn)*

3944-11-OH: Julian Kalac P. Eng. (Applicant) v. Mobile Climate Control Inc. (Respondent) *(Withdrawn)*

4047-11-OH: Rick Portuondo (Applicant) v. Eurostyle 50 (Respondent) *(Withdrawn)*

0074-12-OH: Sarah Shier (Applicant) v. Ice River Springs Water Co. Inc. (Respondent) *(Dismissed)*

CONSTRUCTION INDUSTRY GRIEVANCES

3065-07-G: Carpenters and Allied Workers, Local 27, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Varcon Construction Co. Ltd. (Respondent) v. Universal Workers Union, LIUNA Local 183 (Intervener) *(Withdrawn)*

2267-08-G; 2270-08-G; 2272-08-G; 2273-08-G; 2275-08-G; 2628-08-G; 0224-10-G: Sheet Metal Workers International Association, Local 47 (Applicant) v. Flynn Canada Inc. and, Ottawa Vac & Equipment Services (Respondent); Sheet Metal Workers International Association, Local 47 (Applicant) v. Flynn Canada Inc. (Respondent); Sheet Metal Workers International Association, Local 47 (Applicant) v. Flynn Canada Ltd. and, Leak Free Roofing (Respondent); Sheet Metal Workers International Association, Local Union No. 47 (Applicant) v. Flynn Canada Ltd. (Respondent) *(Withdrawn)*

1046-10-G: International Brotherhood of Electrical Workers, Local 530 (Applicant) v. Honeywell Limited (Respondent) *(Granted)*

2177-10-G; 3105-11-G; 3106-11-G; 3107-11-G: Plumbers' Residential Council, Ontario (Applicant) v. Kidd Mechanical Inc. (Respondent) Ontario Pipe Trades Council of the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada (Applicant) v. Kidd Mechanical Inc. (Respondent); Ontario Pipe Trades Council, Plumbers Residential Council, Ontario (Applicant) v. Kidd Mechanical Inc. (Respondent); Ontario Pipe Trades Council of the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada (Applicant) v. Kidd Mechanical Inc. (Respondent) *(Endorsed Settlement)*

3797-10-G: Labourers' International Union of North America, Ontario Provincial District Council (Applicant) v. Weathertech Restoration Services Inc. and, London Caulking and Installations Ltd. (Respondent) *(Terminated)*

0029-11-G: International Brotherhood of Electrical Workers, Local 530 (Applicant) v. DMW Electrical Instrumentation Inc. (Respondent) *(Withdrawn)*

0030-11-G: International Brotherhood of Electrical Workers, Local 530 (Applicant) v. Tee-Jay Electrical and Instrumentation Services Ltd. (Respondent) *(Withdrawn)*

0031-11-G: International Brotherhood of Electrical Workers, Local 530 (Applicant) v. Jacobs Industrial Services Ltd. (Respondent) *(Withdrawn)*

0148-11-G: International Brotherhood of Electrical Workers, Local 894 (Applicant) v. Aecon Industrial, a Division of Aecon Group Inc. (Respondent) v. Electrical Power Systems Construction Association (Intervener) *(Withdrawn)*

1809-11-G: Labourers' International Union of North America, Local 506 (Applicant) v. Urban Mechanical Contracting (1979) LTD. (Respondent) *(Withdrawn)*

2210-11-G; 2211-11-G; 2212-11-G; 2716-11-G; 2717-11-G; 3062-11-G: International Union of Operating Engineers, Local 793 (Applicant) v. PLS Landscaping and Excavation Ltd. (Respondent) *(Terminated)*

2447-11-G: Canadian Union of Skilled Workers (Applicant) v. Hydro One Inc. (Respondent) *(Withdrawn)*

3217-11-G: The Bricklayers, Masons Independent Union of Canada, Local 1 and the Universal Workers Union, Labourers' International Union of North America Local 183 and Masonry Council of Unions Toronto and Vicinity (Applicant) v. All Wall Masons Ltd. and/or GOE Masonry Ltd. (Respondent) *(Granted)*

3526-11-G; 3527-11-G: United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 787 (Applicant) v. Mackay Heating Incorporated c.o.b. as Mackay Advanced Energies (Respondent) *(Withdrawn)*

3582-11-G: International Association of Heat and Frost Insulators and Allied Workers, Local 95 (Applicant) v. Gregory Simpson c.o.b. as Gas Insulation (Respondent) *(Granted)*

3727-11-G: International Association of Bridge, Structural, Ornamental and Reinforcing Ironworkers, Local 721 (Applicant) v. City of Toronto (Respondent) *(Withdrawn)*

3755-11-G: Carpenters' District Council of Ontario and its Local 1669 (Applicant) v. Kiewit - Alarie, A Partnership (KAP) (Respondent) *(Withdrawn)*

3770-11-G: United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 787 (Applicant) v. Direct Energy (Respondent) *(Withdrawn)*

3796-11-G: International Brotherhood of Electrical Workers, Local 353 (Applicant) v. Jacobs Industrial Services Ltd. (Respondent) *(Withdrawn)*

3890-11-G: Carpenters' District Council of Ontario, Local 2041 (Applicant) v. DES Building Contractors Inc. (Respondent) *(Granted)*

3946-11-G: International Brotherhood of Painters and Allied Trades, Local 557 (Applicant) v. Corporation of The City of Toronto (Respondent) *(Withdrawn)*

3971-11-G: IBEW Electrical Power Council of Ontario and International Brotherhood of Electrical Workers, Local 894 (Applicant) v. Aecon Industrial, A Division of Aecon Group Inc. (Respondent) *(Withdrawn)*

4012-11-G: Carpenters & Allied Workers Local 27, United Brotherhood of Carpenters and Joiners of America (Applicant) v. 6665268 Canada Inc. o/a Absolute Installations (Respondent) *(Granted)*

4014-11-G: Labourers' International Union of North America, Local 506 (Applicant) v. 1632422 Ontario Inc. C.O.B. AS Troya Services. (Respondent) *(Withdrawn)*

4016-11-G: Masonry Council of Unions Toronto and Vicinity, Bricklayers, Masons' Independent Union of Canada Local 1, and Universal Workers Union, Labourers' International Union of North America, Local 183 (Applicant) v. Caxineiro Construction Inc., and, Kaxineiro Construction Inc. (Respondent) *(Granted)*

4029-11-G: International Union of Operating Engineers, Local 793 (Applicant) v. T C Contracting Inc. (Respondent) *(Granted)*

4030-11-G: International Union of Operating Engineers, Local 793 (Applicant) v. T C Contracting Inc. (Respondent) *(Granted)*

4038-11-G: The International Union of Painters and Allied Trades, Local Union 1891 (Applicant) v. Albert Panaro c.o.b. as Able Painting & Decorating (Respondent) *(Granted)*

4052-11-G: United Brotherhood of Carpenters and Joiners of America, Local 93, Local 249, Local 397, Local 446, Local 494, Local 785, Local 1669, Local 1946, Local 1988, Local 2222, Local 2486 (hereinafter known as "Carpenter Local Unions participating in the OPC Trust Funds") (Applicant) v. Haefen Inc./Chris R. Wilkins and Randy M. Pindur c.o.b. as Haefen Restorations Respondent) *(Granted)*

4054-11-G: United Brotherhood of Carpenters and Joiners of America, Local 93, Local 249, Local 397, Local 446 , Local 494, Local 785, Local 1669, Local 1946, Local 1988, Local 2222, Local 2486 (hereinafter known as "Carpenter Local Unions participating in the OPC Trust Funds") (Applicant) v. Joe Da Silva c.o.b. as JD Installations/ JD Cold Rooms (Respondent) *(Granted)*

4055-11-G: United Brotherhood of Carpenters and Joiners of America, Local 93, Local 249, Local 397, Local 446, Local 494, Local 785, Local 1669, Local 1946, Local 1988, Local 2222, Local 2486 (hereinafter known as "Carpenter Local Unions participating in the OPC Trust Funds") (Applicant) v. Formcrete Structural Ltd. (Respondent) *(Granted)*

4056-11-G: Carpenters & Allied Workers, Local 27, United Brotherhood of Carpenters and Joiners of America (Applicant) v. C.F. Concrete & Drain Inc. (Respondent) *(Granted)*

4065-11-G: Universal Workers Union, Labourers' International Union of North America, Local 183 (Applicant) v. D. Crupi & Sons Limited (Respondent) *(Withdrawn)*

4069-11-G: International Union of Operating Engineers, Local 793 (Applicant) v. Total Siteworks Inc. (Respondent) *(Granted)*

4070-11-G: International Union of Operating Engineers, Local 793 (Applicant) v. Total Siteworks Inc. (Respondent) *(Granted)*

4072-11-G: Universal Workers Union, L.I.U.N.A. Local 183 (Applicant) v. Four Seasons Site Development Ltd. (Respondent) *(Withdrawn)*

4073-11-G: The International Union of Painters and Allied Trades, Local Union 1891 (Applicant) v. Straun William Costie c.o.b. as CC Group Contracting (Respondent) *(Granted)*

4078-11-G: Masonry Council of Unions Toronto and Vicinity, Bricklayers, Masons' Independent Union of Canada Local 1, and, Universal Workers Union, Labourers' International Union of North America Local 183 (Applicant) v. Pillar General Contracting Ltd. (Respondent) *(Granted)*

4102-11-G: Sheet Metal Workers' International Association, Local 30 (Applicant) v. 821120 Ontario Inc., c.o.b. as Heritage M & E (Respondent) *(Withdrawn)*

4110-11-G: Labourers' International Union of North America, Local 625 (Applicant) v. Coco Paving Inc. (Respondent) *(Withdrawn)*

0006-12-G: The International Union of Painters and Allied Trades, Local Union 1819 (Applicant) v. Ian Brindle c.o.b. as Brindle Glass & Mirror (Respondent) *(Granted)*

0018-12-G: Sheet Metal Workers' International Association, Local 30 (Applicant) v. KEM Khider Electro Mechanical (Respondent) *(Granted)*

0019-12-G: Labourers' International Union of North America, Local 527 (Applicant) v. M & M Concrete & Stone Inc. (Respondent) *(Granted)*

0026-12-G: Labourers' International Union of North America, Local 527 (Applicant) v. Presto Construction Inc. (Respondent) *(Granted)*

0037-12-G: Quality Control Council of Canada (Applicant) v. Team Industrial Services (Respondent) *(Withdrawn)*

0053-12-G: International Brotherhood of Electrical Workers, Local Union 804 (Applicant) v. Ainsworth Inc. (Respondent) *(Withdrawn)*

0090-12-G: Carpenters & Allied Workers Local 27, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Richmond Tile Limited (Respondent) *(Granted)*

0091-12-G: International Brotherhood of Electrical Workers, Local 1739 (Applicant) v. Plan Group Inc. (Respondent) *(Withdrawn)*

0106-12-G: The Carpenters' District Council of Ontario, Local Union 93 (Applicant) v. ACTT Installation Ltd. (Respondent) *(Granted)*

0154-12-G: Sheet Metal Workers' International Association, Local 30 (Applicant) v. Sure-Way Metal Products Inc. (Respondent) *(Granted)*

0155-12-G: International Union of Operating Engineers, Local 793 (Applicant) v. C.H. Excavating (London) Ltd. (Respondent) *(Granted)*

APPLICATIONS FOR ACCREDITATION

1795-11-R: Residential Heating Ventilation Contractors Association (Applicant) v. Sheet Metal Workers' International Association, Local Union No. 285 (Respondent) *(Granted)*

APPEALS - EMPLOYMENT STANDARDS ACT

2826-10-ES; 2827-10-ES; 2828-10-ES: William Car director of OceanLake Commerce Inc. (Applicant) v. Jean Marc Jocelyn Indjike Bakob, Director of Employment Standards (Respondent); Edward DeSousa director of OceanLake Commerce Inc. (Applicant) v. Jean Marc Jocelyn Indjike Bakob, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

3170-10-ES: Tim Claude Pelletier and Susanne Ingrid Pickhardt o/a T.S. Enterprise/Teastore (Applicant) v. Sarah A. Bebawy and, Director of Employment Standards (Respondent) (Endorsed Settlement)

3445-10-ES: Annie Leung (Applicant) v. Under The Banyan Tree Centre For The Devdlopmentally Disabled, Director of Employment Standards (Respondent) *(Dismissed)*

3545-10-ES: 307863 Ontario Inc. operating as Peter's Family Fare Restaurant (Applicant) v. Angel M. Young and, Director of Employment Standards (Respondent) *(Dismissed)*

3810-10-ES: Ranpreet Singh Randhawa (Applicant) v. 1421326 Ontario Inc. o/a Carmelita Flaim and, Director of Employment Standards (Respondent) *(Dismissed)*

4090-10-ES: Praimdat Tony Persaud (Applicant) v. Paramdai Birbal and, Director of Employment Standards (Respondent) *(Granted)*

0716-11-ES: Michael W. MacKay a Director of EKO Manufacturing (Applicant) v. Michael Fritz, Andrew McGovern, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

0720-11-ES: Dog Sense Inc. (Applicant) v. Tarah Motuzas and, Director of Employment Standards (Respondent) *(Granted)*

0752-11-ES: Rowena Diep operating as Rowena Diep (Applicant) v. Sharon Esteban Pedronan and, Director of Employment Standards (Respondent) *(Dismissed)*

0894-11-ES: Jeffrey A. Winn (Applicant) v. Costco Wholesale Canada Ltd. and, Director of Employment Standards (Respondent) *(Dismissed)*

0947-11-ES: Herbert Chambers, a director of 1215223 Ontario Ltd. o/a Chambers Family Farm (Applicant) v. Desiree Black and, Director of Employment Standards (Respondent) *(Dismissed)*

1011-11-ES: Herbert Chambers, a director of 1215223 Ontario Ltd. o/a Chambers Family Farm (Applicant) v. Sarah Green and, Director of Employment Standards (Respondent) *(Dismissed)*

1013-11-ES: Herbert Chambers, a director of 1215223 Ontario Ltd. o/a Chambers Family Farm (Applicant) v. Jordan Overland and, Director of Employment Standards (Respondent) *(Dismissed)*

1029-11-ES: Garnet Adair (Applicant) v. 2188660 Ontario Inc. o/a Master Technician 5 and, Director of Employment Standards (Respondent) *(Granted)*

1261-11-ES: 1093899 Ontario Limited o/a Beacon Harbourside Inn (Applicant) v. Michelle Parker and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

1262-11-ES: Dana Hospitality Inc. operating as Tim Horton's (Applicant) v. Sukhjinder Dhaliwal and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

1273-11-ES: Zipclip Moulding Inc. (Applicant) v. Noel Chase, and Director of Employment Standards (Respondent) *(Withdrawn)*

1375-11-ES: Leuschen Bros. Limited and 862390 Ontario Inc. (Applicant) v. Pierrette Mo[illegible]a and, Director of Employment Standards (Respondent) *(Granted)*

1431-11-ES: AFTT Developments Inc. operating as Golden Pond RV Resort (Applicant) v. Mike Amaral and, Director of Employment Standards (Respondent) *(Granted)*

1449-11-ES: Abdallah Shaker o/a A.N. Shaker General Accountant / Tax Consultant (Applicant) v. Tamrat Haile, and Director of Employment Standards (Respondent) *(Endorsed Settlement)*

1467-11-ES; 1468-11-ES; 1469-11-ES; 1470-11-ES: Ramin Sarrami (Applicant) v. The City of Toronto and, Director of Employment Standards (Respondent); Bert Kingsley (Applicant) v. The City of Toronto and, Director of Employment Standards (Respondent); William Pritchard (Applicant) v. The City of Toronto and, Director of Employment Standards (Respondent); David Neil (Applicant) v. The City of Toronto and, Director of Employment Standards (Respondent) *(Dismissed)*

1898-11-ES: Cheryl Anne Yurkowski (Applicant) v. Eleanor Scott o/a Buck-A-Roo Dollar & Gift Store and, Director of Employment Standards (Respondent) *(Granted)*

1946-11-ES: 7138458 Canada Corp. o/a Conquest P.O.S (Applicant) v. Scott W. McWilliam, and Director of Employment Standards (Respondent) *(Granted)*

2044-11-ES: Jerry Laverdure (Applicant) v. H.S. Pike Holdings Ltd. o/a Canadian Tire Associate Store #253 and, Director of Employment Standards (Respondent) *(Dismissed)*

2221-11-ES: Bruce Edward Orr (Applicant) v. 593416 Ontario Inc. o/a Monte Carlo Inn and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

2287-11-ES: Mohamed Ali Osman (Applicant) v. Roxboro Business Services Inc., and Director of Employment Standards (Respondent) *(Endorsed Settlement)*

2289-11-ES: Abby Gauthier (Applicant) v. Talisman Resort GP Inc. and, Director of Employment Standards (Respondent) *(Dismissed)*

2629-11-ES: Maid Day! Maid Day! Inc (Applicant) v. Michelle Rego, and Director of Employment Standards (Respondent) *(Endorsed Settlement)*

2692-11-ES: Sabry Bebawy (Applicant) v. Provincial Store Fixtures Limited, and Director of Employment Standards (Respondent) *(Endorsed Settlement)*

2702-11-ES: 2184664 Ontario Inc. operating as Slackoni's Inc. (Applicant) v. Katie Kilroy and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

2797-11-ES: Lisbon Paving Co. Limited (Applicant) v. Stephen Reid, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

2931-11-ES: 1678448 Ontario Inc. o/a Msp - 1678448 Ontario Ltd. (Applicant) v. Chanchal Tamber and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

2975-11-ES: Deborah L. Fischer (Applicant) v. My Top Drawer Limited and, Director of Employment Standards (Respondent) *(Withdrawn)*

2999-11-ES: Joseph Tressler, a Director of Oil Screen - Reven North America Inc. 1767789 (Applicant) v. Amir Girgis and, Director of Employment Standards (Respondent) *(Granted)*

3015-11-ES: Toga Operations Limited (Applicant) v. Director of Employment Standards (Respondent) *(Dismissed)*

3079-11-ES: Sandra Wood (Applicant) v. Daniel Renaud, Suzanne Brandon and, Director of Employment Standards (Respondent) *(Withdrawn)*

3108-11-ES: Astro Design Inc. (Applicant) v. Angelo Fabris and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

3208-11-ES: 707180 Ontario Ltd. o/a Standard Pasta Pizza & Bar (Applicant) v. Scott Cheslock, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

3210-11-ES: Sharon Fleming (Applicant) v. Homes by DeSantis Inc., Director Of Employment Standards (Respondent) *(Endorsed Settlement)*

3223-11-ES: AstraZeneca Canada Inc. (Applicant) v. Paula Carrothers and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

3239-11-ES: Deverett Professional Corporation (Applicant) v. Dancy Yu and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

3242-11-ES: VGW Enterprises Ltd. (Applicant) v. Heather Menzies-Gordon, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

3246-11-ES: IBM Canada Limited/IBM Canada Limitée (Applicant) v. Dwayne Nicholson and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

3294-11-ES: 1496348 Ontario Inc. o/a The Honest Lawyer (Applicant) v. Omar Daoud, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

3359-11-ES: 1800776 Ontario Inc. operating as Pro Eye Lash & Nail (Applicant) v. Yasmin Ladak and, Director of Employment Standards (Respondent) *(Terminated)*

3436-11-ES: Terry Veneschuk (Applicant) v. Domco Foodservices Limited and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

3440-11-ES: Sasa Curgus (Applicant) v. Applewood Air-Conditioning Ltd., and Director of Employment Standards (Respondent) *(Endorsed Settlement)*

3458-11-ES: Sabrina Rahmali (Applicant) v. Gold Medal Creations Inc. Kats Designs and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

3469-11-ES: Benevito Foods Inc. (Applicant) v. Nadia Deeb, Director Of Employment Standards (Respondent) *(Endorsed Settlement)*

3479-11-ES: Terry Yiu, Charles Chan, James Tang, Kin Chung Lam, Directors of 2811 Development Corporation (Applicant) v. Maggie W.L. Ng and, Director of Employment Standards (Respondent) *(Granted)*

3505-11-ES: Samoil Rusu (Applicant) v. H&O Centerless Grinding Company and, Director of Employment Standards (Respondent) *(Withdrawn)*

3542-11-ES: Domco Foodservices Limited (Applicant) v. Terry Veneschuk and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

3626-11-ES: Metex Inc. (Applicant) v. Jie (Jim) Qian, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

3637-11-ES: Antionette Dabit (Applicant) v. Apollo 8 Maintenance Services Inc. and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

3648-11-ES: Hazel W. Goco (Applicant) v. First Media Group Inc. and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

3681-11-ES: Angela Staffiere (Applicant) v. Grande Cheese Company Ltd., Director of Employment Standards (Respondent) *(Endorsed Settlement)*

3711-11-ES: Premier Canada Maid Service (Applicant) v. Natasha Ryan, and Director of Employment Standards (Respondent) *(Dismissed)*

3712-11-ES: AquaLibrium Water Technologies Ltd. (Applicant) v. Jake Simmons and, Director of Employment Standards (Respondent) *(Endorsed Settlement)*

3718-11-ES: 1541625 Ontario Ltd. Mangia Mangia Mangia (Applicant) v. Travis Johnston and, Director of Employment Standards (Respondent) *(Dismissed)*

3729-11-ES: Paul Rutledge (Applicant) v. Oshawa Travel Limited and, Director of Employment Standards (Respondent) *(Dismissed)*

3847-11-ES: Akryl Industries Inc. (Applicant) v. Chandrama Jagdeo and, Director of Employment Standards (Respondent) *(Terminated)*

3925-11-ES: True North Power NG Inc. (Applicant) v. Terry Chandler and, Director of Employment Standards (Respondent) *(Dismissed)*

3980-11-ES: 775669 Ontario Inc. o/a Green Tree Landscapers (Applicant) v. Paul Scala and, Director of Employment Standards (Respondent) *(Dismissed)*

3981-11-ES: 775669 Ontario Inc. o/a Green Tree Landscapers (Applicant) v. Nathan Leclair and, Director of Employment Standards (Respondent) *(Dismissed)*

4028-11-ES: Aisling Mary Lanigan o/a Student Painting Enterprises (Applicant) v. David Olevson and, Director of Employment Standards (Respondent) *(Dismissed)*

APPEALS - OCCUPATIONAL HEALTH AND SAFETY ACT

2636-11-HS: Par-Pak Limited (Applicant) v. Hardeep Randhawa - Inspector (Respondent) *(Withdrawn)*

3931-11-HS; 3932-11-HS: Twin Lakes Terrace Retirement Living (Applicant) v. Beth Netherscott, Inspector (Respondent) *(Terminated)*

0033-12-HS: St. Joseph's Health Centre, Guelph (Applicant) v. Canadian Union of Public Employees Local 1033, The Ontario Nurses Association Local 025 and, Richard Den Bok, Inspector (Respondent) *(Granted)*

FIRST AGREEMENT - DIRECTION

0055-12-FC: Hospitality & Service Trade Union, Local 261 (Applicant) v. Aramark Canada Inc. (Respondent) *(Granted)*

PAY EQUITY ACT

0105-12-PE: Miki Shinozaki (Applicant) v. Hotlomi Spa (Respondent) *(Terminated)*

PUBLIC SECTOR LABOUR RELATIONS TRANSITION ACT, 1997

2353-10-PS: North Bay General Hospital ("NBGH") and North East Mental Health Centre ("NEMHC") (Applicant) v. Ontario Public Service Employees Union, Local 636 ("OPSEU Local 636"), Ontario Public

Service Employees Union, Local 662 ("OPSEU Local 662"), Ontario Public Service Employees Union, Local 666 ("OPSEU Local 666"), Ontario Nurses' Association, Local 2 ("ONA Local 2"), Ontario Nurses' Association, Local 20 ("ONA Local 20"), Canadian Union of Public Employees, Local 139 ("CUPE Local 139"), Canadian Union of Public Employees, Local 1101 ("CUPE Local 1101"), Canadian Union of Public Employees, Local 1623 ("CUPE Local 1623") and, Service Employees International Union, Local 1 ("SEIU Local 1") (Respondent) *(Withdrawn)*

SECTOR DETERMINATION (SECTION 153)

0342-08-M: Carpenters and Allied Workers, Local 27, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Varcon Construction Co. Ltd. and, Universal Workers Union, Labourers' International Union of North America, Local 183 (Respondent) v. Toronto and Area Road Builders' Association, Greater Toronto Sewer and Watermain Contractors Association (Intervener) *(Withdrawn)*

3444-11-M: PLS Landscaping and Excavation Ltd. (Applicant) v. International Union of Operating Engineers, Local 793 and, Labourers' International Union of North America, Local 1059 (Respondent) *(Withdrawn)*

APPLICATIONS FOR RECONSIDERATION OF BOARD'S DECISION

0784-05-G; **2836-08-G**: Ontario Sheet Metal Workers' and Roofers' Conference (Applicant) v. Ellis-Don Limited (Respondent); International Brotherhood of Electrical Workers, Local 586 (Applicant) v. EllisDon Corporation (Respondent) *(Dismissed)*

1397-10-R; **1738-10-U**: Labourers' International Union of North America, Ontario Provincial District Council (Applicant) v. E.T. Construction Inc. (Respondent); Labourers' International Union of North America, Ontario Provincial District Council (Applicant) v. E.T. Construction Inc. and/or Construction E.T. Inc. (Respondent) *(Dismissed)*

1444-10-ES: Deena Schiller (Applicant) v. P & L Corporation Ltd. and, Director of Employment Standards (Respondent) *(Granted)*

3102-10-U: Dr. W. Larry Grovum (Applicant) v. The University of Guelph Faculty Association (UGFA) and, The Canadian Association of University Teachers (CAUT) (Respondent) v. University of Guelph (Intervener) *(Dismissed)*

3323-10-ES: John Skwarek (Applicant) v. Repower Automotive Services Inc. and, Director of Employment Standards (Respondent) *(Granted)*

4129-10-ES: John Henry He (Applicant) v. Ryan Electric Inc. and, Director of Employment Standards (Respondent) *(Dismissed)*

1157-11-U: Laura Reid (Applicant) v. Canadian Auto Workers Union, Local 222 (Respondent) v. General Motors of Canada Limited (Intervener) *(Dismissed)*

1248-11-ES: Mark Woods (Applicant) v. Her Majesty the Queen in Right of Ontario (as represented by the Ministry of Community and Correctional Services) and, Director of Employment Standards (Respondent) *(Dismissed)*

2289-11-ES Abby Gauthier, (Applicant) v. Talisman Resort GP Inc. and Director of Employment Standards, (Respondent) *(Dismissed)*

3020-11-U: Gurdeep Nagra (Applicant) v. United Steel, Paper, Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers Union (Respondent) *(Dismissed)*

3218-11-U: Mark Harris (Applicant) v. Carpenters' Local Union 27 (Respondent) *(Dismissed)*

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APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD DURING MAY 2012

APPLICATIONS FOR CERTIFICATION

Bargaining Agents Certified Without Vote

1144-11-R: The International Union of Painters and Allied Trades, Local Union 1891 (Applicant) v. 1433311 Ontario Ltd. operating as Habib Homes (Respondent)

Unit: "all painters and painters' apprentices in the employ of 1433311 Ontario Ltd. Operating as Habib Homes in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all painters and painters' apprentices in the employ of 1433311 Ontario Ltd. operating as Habib Homes in all sectors of the construction industry in the Counties of Essex and Kent, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (2 employees in unit)

1463-11-R: Labourers' International Union of North America, Local 625 (Applicant) v. River Valley Construction Inc. (Respondent)

Unit: "all construction labourers in the employ of River Valley Construction Inc. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all construction labourers in the employ of River Valley Construction Inc. in all sectors of the construction industry in the Counties of Essex and Kent, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (7 employees in unit)

2384-11-R: Labourers' International Union of North America, Ontario Provincial District Council (Applicant) v. D & S Railway Construction Inc. (Respondent)

Unit: "all construction labourers in the employ of D & S Railway Construction Inc. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all construction labourers in the employ of D & S Railway Construction Inc. in all sectors of the construction industry in the Regional Municipality of Niagara and that portion of the Regional Municipality of Haldimand-Norfolk coming within the former County of Haldimand, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (2 employees in unit)

2915-11-R: The Carpenters' District Council of Ontario, United Brotherhood of Carpenters and Joiners of America (Applicant) v. M.C. Marine Inc. (Respondent)

Unit: "all carpenters and carpenters' apprentices in the employ of M.C. Marine Inc. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all carpenters and carpenters' apprentices in the employ of M.C. Marine Inc. in all sectors of the construction industry in the geographic Townships of Elizabethtown, Augusta and Edwardsburg and all lands south thereof in the United Counties of Leeds and Grenville, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (3 employees in unit)

3493-11-R: Labourers' International Union of North America, Ontario Provincial District Council (Applicant) v. Rancourt Metal Erectors (2009) Ltd. (Respondent)

Unit: "all construction labourers in the employ of Rancourt Metal Erectors (2009) Ltd. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all construction labourers in the employ of Rancourt Metal Erectors (2009) Ltd. in all sectors of the construction industry within a radius of 57 kilometers (approximately 35 miles) of the City of Sudbury Federal Building, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (3 employees in unit)

3989-11-R: Labourers' International Union of North America, Ontario Provincial District Council (Applicant) v. Laird Constructors Inc. (Respondent)

Unit: "all construction labourers in the employ of Laird Constructors Inc. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all construction labourers apprentices in the employ of Laird Constructors Inc. in all sectors of the construction industry in within a radius of 81 kilometers (approximately 50 miles) of the Timmins Federal Building, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non working foreman" (5 employees in unit)

4007-11-R: The Carpenters' District Council of Ontario, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Laird Constructors Inc. (Respondent)

Unit: "all carpenters and carpenters' apprentices in the employ of Laird Constructors Inc. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all carpenters and carpenters' apprentices in the employ of Laird Constructors Inc. in all sectors of the construction industry in within a radius of 81 kilometers (approximately 50 miles) of the Timmins Federal Building, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (2 employees in unit)

4061-11-R: Construction Workers Local 6 affiliated with the Christian Labour Association of Canada (Applicant) v. Trade Works Residential Labour Inc. (Respondent)

Unit: "all labourers carpenters and operating engineers in the employ of Trade Works Residential Labour Inc. in all sectors of the construction industry in the Regional Municipality of Niagara and that portion of the Regional Municipality of Haldimand Norfolk coming within the former County of Haldimand the Regional Municipality of Waterloo (except that portion of the geographic Township of Beverly annexed by North Dumfries Township), save and except non-working foremen and persons above the rank of non-working foreman" (8 employees in unit)

4091-11-R: Universal Workers Union, Labourers' International Union of North America, Local 183 (Applicant) v. 4540972 Canada Inc. o/a Reliance Construction Toronto (Respondent)

Unit: "all construction labourers in the employ of 4540972 Canada Inc. o/a Reliance Construction Toronto in all sectors of the construction industry in the City of Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (1 employees in unit)

0246-12-R: Universal Workers Union, Labourers' International Union of North America Local 183 (Applicant) v. Limen Group Ltd. (Respondent) v. Ontario Masonry Contractors' Association, Brick and Allied Craft Union of Canada (Intervener)

Unit: "all construction labourers, bricklayers, bricklayers' apprentices, stonemasons, stonemasons' apprentices, plasterers and improvers in the employ of Limen Group Ltd. in all sectors of the construction industry in the City of Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and

Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (3 employees in unit)

0356-12-R: Labourers' International Union of North America, Ontario Provincial District Council (Applicant) v. Vito Tarantino Ltd. (Respondent)

Unit: "all construction labourers in the employ of Vito Tarantino Ltd. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all construction labourers in the employ of Vito Tarantino Ltd. in all sectors of the construction industry in the District of Kenora including the Patricia portion, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non working foreman" (2 employees in unit)

0361-12-R: Labourers' International Union of North America, Ontario Provincial District Council (Applicant) v. Gilbert Desroches Concrete Floor Finishing Inc. (Respondent)

Unit: "all construction labourers in the employ of Gilbert Desroches Concrete Floor Finishing Inc. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all construction labourers in the employ of Gilbert Desroches Concrete Floor Finishing Inc. in all sectors of the construction industry in the County of Simcoe and the District Municipality of Muskoka, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (16 employees in unit)

0521-12-R: Labourers' International Union of North America, Ontario Provincial District Council (Applicant) v. Ron Lee Construction Inc. (Respondent)

Unit: "all construction labourers in the employ of Ron Lee Construction Inc. in all sectors of the construction industry in the Counties of Oxford, Perth, Huron, Middlesex, Bruce and Elgin, excluding the industrial, commercial and institutional sector of the construction industry, save and except non-working forepersons and persons above the rank of non-working forepersons"
(5 employees in unit)

0568-12-R: International Union of Operating Engineers, Local 793 (Applicant) v. AGS Associates Inc. (Respondent)

Unit: "all employees engaged in the operation of cranes, shovels, bulldozers and similar equipment, and those primarily engaged in the repairing and maintaining of same, and employees engaged as surveyors in the employ of AGS Associates Inc. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and bulldozers and similar equipment, and those primarily engaged in the repairing and maintaining of same, and employees engaged as surveyors in the employ of AGS Associates Inc. in all sectors of the construction industry in the City of Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non working foreman" (6 employees in unit)

0573-12-R: Allied Construction Employees Local 1030, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Leblon Carpentry Inc. (Respondent)

Unit: "all carpenters and carpenters' apprentices and all construction labourers in the employ of Leblon Carpentry Inc. in all sectors of the construction industry in the City of Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional

Municipality of Durham, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (6 employees in unit)

Bargaining Agents Certified Subsequent to Vote

3685-11-R: Operative Plasterers' and Cement Masons' International Association of the United States and Canada Local Union 598 (Applicant) v. Clifford Masonry Limited/, Clifford Restoration Limited, sometimes operating as Clifford Group (Respondent) v. Brick and Allied Craft Union of Canada (Intervener)

Unit: "all masonry restoration employees employed by Clifford Masonry Limited/Clifford Restoration Limited, sometimes operating as Clifford Group in all sectors of the construction industry in the Province of Ontario, and all masonry restoration employees employed by Clifford Masonry Limited/Clifford Restoration Limited, sometimes operating as Clifford Group in maintenance work in the Province of Ontario, save and except persons covered by subsisting collective agreements between the Brick and Allied Craft Union of Canada or the Ontario Provincial Conference of the International Union of Bricklayers and Allied Craftworkers, and save and except for non-working foremen and persons above the rank of non-working foreman. This collective agreement applies as well, to employees of Clifford Masonry Limited/Clifford Restoration Limited, sometimes operating as Clifford Group in and out of areas of the Province where the BACU holds bargaining rights." (3 employees in unit)

Number of names of persons on revised voters' list	4
Number of persons who cast ballots	21
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	3
Number of segregated ballots cast by persons whose names appear on voter's list	1
Number of segregated ballots cast by persons whose names do not appear on voters' list	17
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	3
Number of ballots marked against applicant	0
Number of ballots segregated and not counted	1

4077-11-R: Teamsters Local Union No. 879 (Applicant) v. RPM Environment Ltd. (Respondent)

Unit: "all employees of RPM Environment Ltd. in the City of Burlington, save and except supervisors and persons above the rank of supervisor, office and clerical" (13 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	22
Number of persons who cast ballots	17
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	3
Number of segregated ballots cast by persons whose names appear on voter's list	14
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	10
Number of ballots marked against applicant	1
Number of ballots segregated and not counted	6

0030-12-R: Canadian Union of Public Employees (Applicant) v. Nipissing Transition House (Respondent)

Unit: "all casual-relief employees employed by the Nipissing Transition House in the City of North Bay Ontario save and except managers and persons above the rank of manager and any person already represented by a trade union" (12 employees in unit)

Number of names of persons on revised voters' list	12
Number of persons who cast ballots	11
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	10
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	1
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	10
Number of ballots marked against applicant	1
Number of ballots segregated and not counted	0

0071-12-R: Public Service Alliance of Canada (Applicant) v. Université Saint-Paul - Saint Paul University (Respondent)

Unit: "all employees of Université Saint-Paul - Saint Paul University employed as part-time academic staff, including per course instructors, sessional lecturers, and graduate students, to teach regular and distance education credit and non-credit courses, having full or joint full responsibility for one or more courses, in the city of Ottawa, save and except employees in bargaining units for which any trade union held bargaining rights as of April 10, 2012." (40 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	27
Number of persons who cast ballots	27
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	21
Number of segregated ballots cast by persons whose names appear on voter's list	12
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	22
Number of ballots marked against applicant	5
Number of ballots segregated and not counted	0

0093-12-R: United Food and Commercial Workers International Union, Local 175 (Applicant) v. Compass Group Canada Ltd. (Compass Canada Support Services Ltd.) (Respondent)

Unit: "all employees of Compass Group Canada Ltd. (Compass Canada Support Services Ltd.), engaged in cleaning services at 299 Doon Valley Dr. except supervisors, persons above the rank of supervisor, office and clerical staff" (31 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	31
Number of persons who cast ballots	33
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	31
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	2
Number of spoiled ballots	0

Number of ballots marked in favour of applicant	24
Number of ballots marked against applicant	7
Number of ballots segregated and not counted	20

0097-12-R: United Food and Commercial Workers International Union, Local 175 (Applicant) v. Loudon Bros. Limited (Respondent)

Unit: "all employees of Loudon Bros. Limited working in or out of the City of Thunder Bay, Ontario, save and except supervisors, persons above the rank of supervisors, office, sales and clerical staff" (32 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	32
Number of persons who cast ballots	32
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	29
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	3
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	17
Number of ballots marked against applicant	15
Number of ballots segregated and not counted	0

0107-12-R: U.F.C.W. Local 333 (Applicant) v. Primary Response Inc. (Respondent)

Unit: "all employees of Primary Response Inc. employed as security guards at the Ministry of Finance Building at 1550 Bayly St., Pickering, Ontario save and except supervisors and persons above the rank of supervisor" (4 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	3
Number of persons who cast ballots	3
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	3
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	2
Number of ballots marked against applicant	1
Number of ballots segregated and not counted	0

0110-12-R: Canadian Union of Public Employees (Applicant) v. Corporation of the Town of Hawkesbury (Respondent)

Unit: "all employees of the Aquatics Department employed by the Corporation of the Town of Hawkesbury, Ontario, save and except supervisors and persons above the rank of supervisor, clerical and support staff and any employee already represented by a trade union." (24 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	26
Number of persons who cast ballots	19
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	17

Number of segregated ballots cast by persons whose names appear on voter's list	1
Number of segregated ballots cast by persons whose names do not appear on voters' list	1
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	16
Number of ballots marked against applicant	1
Number of ballots segregated and not counted	2

0132-12-R: Ontario Public Service Employees Union (Applicant) v. North Simcoe Muskoka Community Care Access Centre (Respondent)

Unit: "all employees of North Simcoe Muskoka Community Care Access Centre employed in Client Services, save and except executive assistants, administrative assistants, managers and persons above the rank of manager, and persons covered by a subsisting collective agreement" (56 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	58
Number of persons who cast ballots	53
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	52
Number of segregated ballots cast by persons whose names appear on voter's list	1
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	37
Number of ballots marked against applicant	15
Number of ballots segregated and not counted	1

0150-12-R: Labourers' International Union of North America, Local 1059 (Applicant) v. Grete Services Inc. (Respondent)

Unit: "all employees of Grete Services Inc. engaged in cleaning and building services employed in the City of London, Ontario, save and except supervisors, persons above the rank of supervisor, and office staff" (35 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	37
Number of persons who cast ballots	37
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	19
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	18
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	29
Number of ballots marked against applicant	8
Number of ballots segregated and not counted	0

0156-12-R: UFCW Canada Local 1000A (Applicant) v. Chubb Edwards, a UTC Fire & Security Company (Respondent)

Unit: "all employees of Chubb Edwards, a UTC Fire & Security Company employed at 710 South Service Road, Unit 5, Stoney Creek, Ontario, save and except supervisors, persons above the rank of supervisors, coordinators, administrative staff, sales representatives, summer students and agency employees" (20 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	20
Number of persons who cast ballots	18
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	14
Number of segregated ballots cast by persons whose names appear on voter's list	4
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	9
Number of ballots marked against applicant	5
Number of ballots segregated and not counted	4

0169-12-R: United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 787 (Applicant) v. Service Experts Heating & Air Conditioning Inc. o/a, Francis Home Environment, Service Experts Heating & Air Conditioning Inc. o/a Federal Service Experts and Service Experts Heating & Air Conditioning Inc. o/a Dearie Contracting (Respondent)

Unit: "all journeyperson and apprentice refrigeration and air-conditioning mechanics and maintenance mechanics employed by the Service Experts Heating & Air Conditioning Inc. o/a Francis Home Environment, Service Experts Heating & Air Conditioning Inc. o/a Federal Service Experts and Service Experts Heating & Air Conditioning Inc. o/a Dearie Contracting performing maintenance and/or service work in and out of the City of Ottawa and Nepean, save and except persons above the rank of working foreperson" (33 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	39
Number of persons who cast ballots	39
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	35
Number of segregated ballots cast by persons whose names appear on voter's list	3
Number of segregated ballots cast by persons whose names do not appear on voters' list	1
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	27
Number of ballots marked against applicant	8
Number of ballots segregated and not counted	4

0170-12-R: United Food and Commercial Workers International Union, Local 175 (Applicant) v. Saratoga Potato Chip Company Inc. operating as Olde York Potato Chips (Respondent)

Unit: "all employees of Saratoga Potato Chip Company Inc. operating as Olde York Potato Chips located in the City of Brampton, save and except supervisors, those above the rank of supervisor, drivers, office and clerical staff" (60 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	54
Number of persons who cast ballots	47
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	46
Number of segregated ballots cast by persons whose names appear on voter's list	1
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	2
Number of ballots marked in favour of applicant	39
Number of ballots marked against applicant	5
Number of ballots segregated and not counted	1

0192-12-R: Labourers' International Union of North America, Local 1059 (Applicant) v. Compass Canada Support Services o/a Eurest Services (Respondent)

Unit: "all employees of Compass Canada Support Services o/a Eurest Services engaged in cleaning and building services employed at London Hospital Linen Service Inc., 11 Maitland Street, London, Ontario, save and except supervisors, persons above the rank of supervisor and office staff" (5 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	5
Number of persons who cast ballots	5
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	5
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	4
Number of ballots marked against applicant	1
Number of ballots segregated and not counted	0

0214-12-R: United Food and Commercial Workers International Union, Local 175 (Applicant) v. 1112650 Ontario Inc. c.o.b. as Rogers Cove Retirement Home (Respondent)

Unit: "all employees of 1112650 Ontario Inc. c.o.b. as Rogers Cove Retirement Home in the City of Huntsville, Ontario, save and except supervisors, persons above the rank of supervisor, office, clerical and sales staff" (14 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	14
Number of persons who cast ballots	13
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	13
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	12
Number of ballots marked against applicant	1
Number of ballots segregated and not counted	0

0306-12-R: United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (United Steelworkers) (Applicant) v. Neptune Security Services Inc. and/or, 1870712 Ontario Inc. c.o.b. as Neptune Security (Respondent)

Unit: "all employees of 1870712 Ontario Inc. c.o.b. as Neptune Security in the City of Kingston, Ontario, save and except supervisors, persons above the rank of supervisor, and office, clerical and sales staff" (5 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	5
Number of persons who cast ballots	5
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	5
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0

Number of spoiled ballots	0
Number of ballots marked in favour of applicant	5
Number of ballots marked against applicant	0
Number of ballots segregated and not counted	0

0324-12-R: Canadian Union of Public Employees (Applicant) v. St. Stephen's Residences of Ottawa Inc. (Respondent)

Unit: "all employees employed by St. Stephen's Residences of Ottawa Inc. in the City of Ottawa, save and except clerical employees, students, supervisors and persons above the rank of supervisor" (48 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	52
Number of persons who cast ballots	32
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	32
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	23
Number of ballots marked against applicant	9
Number of ballots segregated and not counted	0

0344-12-R: Canadian Union of Public Employees (Applicant) v. The Durham District School Board (Respondent)

Unit: "all employees employed by The Durham District School Board in its Continuing Education Department save and except supervisors and persons above the rank of supervisor, security officers and employees already represented by a Trade Union" (114 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	123
Number of persons who cast ballots	51
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	45
Number of segregated ballots cast by persons whose names appear on voter's list	1
Number of segregated ballots cast by persons whose names do not appear on voters' list	5
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	40
Number of ballots marked against applicant	5
Number of ballots segregated and not counted	6

0354-12-R: Service Employees International Union Local 2, Brewery, General and Professional Workers' Union (Applicant) v. Apollo 8 Maintenance Services Inc. (Respondent)

Unit: "all employees of Apollo 8 Maintenance Services Inc., working at 4711 Yonge St. in the City of Toronto, save and except supervisors and those above the rank of supervisor" (16 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	19
Number of persons who cast ballots	17
Number of ballots excluding segregated ballots cast by persons whose names appear	17

on voter's list	
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	17
Number of ballots marked against applicant	0
Number of ballots segregated and not counted	0

0439-12-R: Service Employees International Union Local 2, Brewery, General and Professional Workers' Union (Applicant) v. UNICCO Facilities Services Company (Respondent)

Unit: "all employees of UNICCO Facilities Services Company, working in the City of Orillia, save and except supervisors and those above the rank of supervisor" (5 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	11
Number of persons who cast ballots	5
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	5
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	5
Number of ballots marked against applicant	0
Number of ballots segregated and not counted	0

Applications for Certification Dismissed Without Vote

2842-11-R: Labourers' International Union of North America, Ontario Provincial District Council (Applicant) v. Novenco Consultants Limited, Kingston Refractory Services Ltd. (Respondent)

0448-12-R: The Canadian Union of Postal Workers (Applicant) v. 3119696 Canada Inc., operating as Quick Messenger Service (QMS), 1118041 Ontario Ltd., operating as Datarush Courier Service, 2945-8171 Quebec Inc., operating as Stingray Courier Service, 1120464 Pronto Courier Service (1995) Ltd., operating as Pronto Toronto (Respondent)

0569-12-R: International Union of Operating Engineers, Local 793 (Applicant) v. AGS Associates Inc. (Respondent)

Applications for Certification Dismissed Subsequent to Vote

2242-10-R: The Carpenters' District Council of Ontario, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Dalren Limited (Respondent)

Unit: "all carpenters and carpenters' apprentices in the employ of Dalren Limited in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario and all carpenters and carpenters' apprentices in the employ of Dalren Limited in all other sectors of the construction industry in the District of Thunder Bay, save and except non-working foremen and persons above the rank of non-working foreman" (4 employees in unit)

Number of names of persons on revised voters' list	7
Number of persons who cast ballots	3

Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	3
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	0
Number of ballots marked against applicant	3
Number of ballots segregated and not counted	0

2340-10-R: Elementary Teachers' Federation of Ontario (Applicant) v. Waterloo Catholic District School Board (Respondent) v. Canadian Union of Public Employees and its Local 2512 (Intervener)

Unit: "all employees employed as designated Early Childhood Educators (as defined by the Education Act) on a regular basis (not including Occasional designated Early Childhood Educators) in the Early Learning Program at Waterloo Catholic District School Board in Waterloo Region, save and except supervisors and persons above the rank of supervisor and those persons already represented by a trade union" (16 employees in unit)

2302-11-R: Allied Construction Employees Local 1030, United Brotherhood of Carpenters and Joiners of America (Applicant) v. New Horizon Homes (Developments) Inc. and/or, New Horizon Home Building Corporation Inc. and/or, New Horizon Homes Westwood Inc. and/or, 1622035 Ontario Inc. o/a New Horizon Homes (Respondent)

Unit: "all construction labourers in the employ of the responding party in the City of Hamilton, the City of Burlington, that portion of the geographic Township of Beverly annexed by North Dumfries Township and that portion of the Town of Milton within the geographic Townships of Nassagaweya and Nelson, in all sectors of the construction industry other than the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (4 employees in unit)

Number of names of persons on revised voters' list	6
Number of persons who cast ballots	6
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	6
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	3
Number of ballots marked against applicant	3
Number of ballots segregated and not counted	0

3514-11-R: Canadian Union of Public Employees (Applicant) v. The Phoenix Network Inc. (Respondent)

Unit: "all Neuro-behavioural Life Skills Counselors employed by The Phoenix Network Inc. in the City of Ottawa, Ontario, save and except supervisors and persons above the rank of supervisor" (28 employees in unit)

Number of names of persons on revised voters' list	28
Number of persons who cast ballots	21
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	17
Number of segregated ballots cast by persons whose names appear on voter's list	4
Number of segregated ballots cast by persons whose names do not appear on voters'	0

list	
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	9
Number of ballots marked against applicant	8
Number of ballots segregated and not counted	4

4092-11-R: Labourers' International Union of North America, Ontario Provincial District Council (Applicant) v. G.M.S. - General Maintenance Services (Respondent) v. Construction Workers Local 53 affiliated with Christian Labour Association of Canada (Intervener)

Unit: "all construction labourers in the employ of G.M.S. - General Maintenance Services in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario and in all other sectors of the construction industry in the County of Lambton, save and except non-working foremen and persons above the rank of non-working foreman" (21 employees in unit)

Number of names of persons on revised voters' list	37
Number of persons who cast ballots	41
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names appear on voter's list	36
Number of segregated ballots cast by persons whose names do not appear on voters' list	5
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	1
Number of ballots marked in favour of intervener	12
Number of ballots segregated and not counted	28

0002-12-R: Labourers' International Union of North America, Local 1089 (Applicant) v. G.M.S. - General Maintenance Services (Respondent) v. Construction Workers Local 53 affiliated with Christian Labour Association of Canada (Intervener)

Unit: "all employees of G.M.S. - General Maintenance Services working in and out of Lambton County, save and except supervisors and persons above the rank of supervisor, and save and except office, clerical and sales staff." (9 employees in unit)

Number of names of persons on revised voters' list	45
Number of persons who cast ballots	48
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names appear on voter's list	48
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	2
Number of ballots marked in favour of intervener	39
Number of ballots segregated and not counted	7

0009-12-R: United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (United Steelworkers) (Applicant) v. Canadian Corps of Commissionaires (Ottawa Division) operating as "Commissionaires Ottawa" (Respondent)

Unit: "all employees of Canadian Corps of Commissionaires (Ottawa Division) and/or Corps of Commissionaires (Ottawa Division) in the City of Ottawa at: - 555 MacKenzie Avenue - 200 Laurier Avenue West - 2300 St. Laurent Blvd. South - 25 McArthur Avenue - 25 Fitzgerald Street - 20

Fitzgerald Street - 21 Fitzgerald Street - 30 Fitzgerald Street save and except Section and/or Site Supervisors, persons above the rank of Section and/or Site Supervisor, and office, clerical and sales staff" (30 employees in unit)

Number of names of persons on revised voters' list	39
Number of persons who cast ballots	23
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	17
Number of segregated ballots cast by persons whose names appear on voter's list	5
Number of segregated ballots cast by persons whose names do not appear on voters' list	1
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	10
Number of ballots marked against applicant	11
Number of ballots segregated and not counted	2

0070-12-R: U.F.C.W. Local 333 (Applicant) v. Whiterose Janitorial Services Ltd. (Respondent)

Unit: "all employees of Whiterose Janitorial Services Ltd, located at 5229 and 5233 Dundas Street West, Etobicoke, Ontario, M9B 6M1 employed as janitors or cleaners save and except supervisors and persons above the rank of supervisors." (12 employees in unit)

Number of names of persons on revised voters' list	12
Number of persons who cast ballots	12
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	7
Number of segregated ballots cast by persons whose names appear on voter's list	5
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	6
Number of ballots marked against applicant	6
Number of ballots segregated and not counted	0

0115-12-R: International Association of Bridge, Structural, Ornamental and Reinforcing Ironworkers, Local 721 (Applicant) v. Precismeca Limited (Respondent)

Unit: "all employees of Precismeca Limited employed in the municipality of Chatham-Kent save and except office and clerical staff, sales staff, supervisors and person above the rank of supervisor" (52 employees in unit)

Number of names of persons on revised voters' list	54
Number of persons who cast ballots	49
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	47
Number of segregated ballots cast by persons whose names appear on voter's list	2
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	9
Number of ballots marked against applicant	38
Number of ballots segregated and not counted	2

0312-12-R: National Automobile, Aerospace, Transportation and General Workers' Union of Canada (CAW-Canada) (Applicant) v. Stock Transportation Ltd. (Respondent)

Unit: "all drivers and driver trainers of Stock Transportation Ltd. employed in the Toronto West division working in and/or out of 60 McCulloch Avenue, Toronto, Ontario save and except managers, persons above the rank of managers, bus monitors, students, full- time dispatchers, sales and full-time office and clerical staff" (280 employees in unit)

Number of names of persons on revised voters' list	314
Number of persons who cast ballots	289
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	285
Number of segregated ballots cast by persons whose names appear on voter's list	1
Number of segregated ballots cast by persons whose names do not appear on voters' list	3
Number of spoiled ballots	1
Number of ballots marked in favour of applicant	118
Number of ballots marked against applicant	168
Number of ballots segregated and not counted	2

Applications for Certification Withdrawn

1483-06-R: United Food and Commercial Workers International Union (UFCW Canada) (Applicant) v. Stratford Chick Hatchery Ltd. (Respondent)

1299-09-R: Labourers' International Union of North America, Ontario Provincial District Council (Applicant) v. Swift Railroad Contractors Corporation (Respondent)

2972-10-R: Carpenters District Council of Ontario, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Jam Finish Carpentry Inc. (Respondent)

0577-11-R: The International Union of Painters and Allied Trades, Local Union 1891 (Applicant) v. KSP Finishes Ltd. (Respondent)

0643-11-R: Ontario Council of Construction Unions (Applicant) v. Quatro Construction Ltd. (Respondent) v. Labourers' International Union of North America, Local 837, Universal Workers Union, L.I.U.N.A Local 183 (Intervener)

0779-11-R: Canadian Construction Workers Union (Applicant) v. Saddlebrook Construction Inc. and/or Saddlebrook Management Consultants Inc. (Respondent) v. Universal Workers Union, Labourers' International Union of North America, Local 183 (Intervener)

1401-11-R: The Restoration Council of Ontario (Applicant) v. Nu-Era Building Restoration Inc. (Respondent) v. Labourers' International Union of North America, Ontario Provincial District Council (Intervener)

3769-11-R: Labourers' International Union of North America, Ontario Provincial District Council (Applicant) v. Floor Solutions (2000) Inc. (Respondent)

3777-11-R: Ontario Public Service Employees Union (Applicant) v. 1003694 Ontario Inc. c.o.b. CarePartners (Respondent)

4058-11-R: United Food and Commercial Workers International Union, (UFCW Canada) (Applicant) v. Saputo Inc. (Respondent)

0057-12-R: Labourers' International Union of North America, Ontario Provincial District Council (Applicant) v. Panoramic Properties Inc. (Respondent)

0135-12-R: Ontario Pipe Trades Council of The United Association of Journeymen and Apprentices of The Plumbing and Pipefitting Industry of The United States and Canada (Applicant) v. Parthian Mechanical Inc. (Respondent)

0252-12-R: Canadian Construction Workers' Union (Applicant) v. Viva Retirement Communities Inc. (Respondent)

0287-12-R: United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (United Steelworkers) (Applicant) v. Neptune Security Services Inc. (Respondent)

0300-12-R: The International Union of Painters and Allied Trades, Local Union 1891 (Applicant) v. Marty Roy c.o.b. as M.T.R. Construction (Respondent)

0365-12-R: Canadian Union of Public Employees (Applicant) v. Holiday Retirement c.o.b. as Sherbrooke Heights Retirement - Peterborough Retirement Living (Respondent)

0517-12-R: Canadian Union of Public Employees (Applicant) v. Sault Ste Marie Library Board (Respondent)

APPLICATIONS FOR DECLARATION OF RELATED EMPLOYER

1912-09-R: The International Union United Automobile, Aerospace and Agricultural Implement Workers of America (UAW-CLC) and its Local 251 (Applicant) v. Vannatter Group Inc., Transcast Precision Inc., Dean Topolinski, Paul Gardner, Asset Engineering LP, Asset Engineering Corporation, Syndicorp Capital Inc. and, Creative Machining Systems Inc. and, Gates Canada Inc. (Respondent) v. Magna Powertrain USA, New Process Gear, Inc., Magna Powertrain Inc., Chrysler Group LLC, Chrysler Canada Ltd., Chrysler Motors LLC, General Motors Corporation (Intervener) (*Endorsed Settlement*)

0171-10-R: United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 787 (Applicant) v. Johnson Controls L.P., Brookfield LePage Johnson Controls Facility Management Services Ltd. and, Brookfield LePage Johnson Controls Facility Management Services LP and (Respondent) (*Withdrawn*)

0735-10-R; **0738-10-R**: Labourers' International Union of North America, Local 1059 (Applicant) v. Alex Almeida Construction Limited, Vilar Construction Masonry Inc., 1129378 Ontario Inc. and, Trump Homes Inc. (Respondent); Brick and Allied Craft Union of Canada, Local 5 and International Union of Bricklayers and Allied Craftworkers, Local 5 (Applicant) v. Alex Almeida Construction Limited, Vilar Construction Masonry Inc., 1129378 Ontario Inc. and, Trump Homes Inc. (Respondent) (*Endorsed Settlement*)

3152-10-R: The Carpenters' District Council of Ontario United Brotherhood of Carpenters and Joiners of America (on its own behalf and on behalf of Constituent Trade Union Drywall Acoustic Lathing and Insulation Local 675) (Applicant) v. Omega General Construction Inc. c.o.b. as Omega Drywall Inc. and, Baretta Interior Contracting Inc. (Respondent) (*Withdrawn*)

0944-11-R: Bricklayers, Masons Independent Union of Canada, Local 1, Universal Workers' Union, Labourers' International Union of North America, Local 183 and Masonry Council of Unions Toronto and Vicinity (Applicant) v. 1478384 Ontario Ltd. o/a B.A. Masonry and/or B.A. Company and, A.S. Masonry & Contracting Inc. (Respondent) (*Granted*)

3860-11-R: Labourers' International Union of North America, Ontario Provincial District Council (Applicant) v. Uhde Corporation of America, Thyssenkrupp Uhde GMBH, Uhde Services GMBH (Respondent) (*Withdrawn*)

0212-12-R: Universal Workers Union, Labourers' International Union of North America, Local 183 (Applicant) v. Clearway Construction Inc. and/or, Teston Pipelines Limited (Respondent) (*Withdrawn*)

0269-12-R: Labourers' International Union of North America, Local 1059 (Applicant) v. David Martin Enterprises (London) Limited, Hurley Group, Compass Group Canada and, Grete Services Inc. (Respondent) (*Withdrawn*)

0455-12-R: The Canadian Union of Postal Workers (Applicant) v. 3119696 Canada Inc., operating as Quick Messenger Service (QMS), 1118041 Ontario Ltd., operating as Datarush Courier Service, 2945-8171 Quebec Inc., operating as Stingray Courier Service, 1120464 Pronto Courier Services (1995) Ltd. operating as Pronto Toronto (Respondent) (*Dismissed*)

SALE OF A BUSINESS

1912-09-R: The International Union United Automobile, Aerospace and Agricultural Implement Workers of America (UAW-CLC) and its Local 251 (Applicant) v. Vannatter Group Inc., Transcast Precision Inc., Dean Topolinski, Paul Gardner, Asset Engineering LP, Asset Engineering Corporation, Syndicorp Capital Inc. and, Creative Machining Systems Inc. and, Gates Canada Inc. (Respondent) v. Magna Powertrain USA, New Process Gear, Inc., Magna Powertrain Inc., Chrysler Group LLC, Chrysler Canada Ltd., Chrysler Motors LLC, General Motors Corporation (Intervener) (*Endorsed Settlement*)

0171-10-R: United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 787 (Applicant) v. Johnson Controls L.P., Brookfield LePage Johnson Controls Facility Management Services Ltd. and, Brookfield LePage Johnson Controls Facility Management Services LP and (Respondent) (*Withdrawn*)

0735-10-R; **0738-10-R**: Labourers' International Union of North America, Local 1059 (Applicant) v. Alex Almeida Construction Limited, Vilar Construction Masonry Inc., 1129378 Ontario Inc. and, Trump Homes Inc. (Respondent); Brick and Allied Craft Union of Canada, Local 5 and International Union of Bricklayers and Allied Craftworkers, Local 5 (Applicant) v. Alex Almeida Construction Limited, Vilar Construction Masonry Inc., 1129378 Ontario Inc. and, Trump Homes Inc. (Respondent) (*Endorsed Settlement*)

3152-10-R: The Carpenters' District Council of Ontario United Brotherhood of Carpenters and Joiners of America (on its own behalf and on behalf of Constituent Trade Union Drywall Acoustic Lathing and Insulation Local 675) (Applicant) v. Omega General Construction Inc. c.o.b. as Omega Drywall Inc. and, Baretta Interior Contracting Inc. (Respondent) (*Withdrawn*)

0944-11-R: Bricklayers, Masons Independent Union of Canada, Local 1, Universal Workers' Union, Labourers' International Union of North America, Local 183 and Masonry Council of Unions Toronto and Vicinity (Applicant) v. 1478384 Ontario Ltd. o/a B.A. Masonry and/or B.A. Company and, A.S. Masonry & Contracting Inc. (Respondent) (*Granted*)

3860-11-R: Labourers' International Union of North America, Ontario Provincial District Council (Applicant) v. Uhde Corporation of America, Thyssenkrupp Uhde GMBH, Uhde Services GMBH (Respondent) (*Withdrawn*)

0212-12-R: Universal Workers Union, Labourers' International Union of North America, Local 183 (Applicant) v. Clearway Construction Inc. and/or, Teston Pipelines Limited (Respondent) (*Withdrawn*)

0269-12-R: Labourers' International Union of North America, Local 1059 (Applicant) v. David Martin Enterprises (London) Limited, Hurley Group, Compass Group Canada and, Grete Services Inc. (Respondent) (*Withdrawn*)

APPLICATIONS FOR DECLARATION TERMINATING BARGAINING RIGHTS

0092-12-R: Employees of: Women's Resources of Kawartha Lakes Formally known as Victoria County Women's Resources Services (Applicant) v. Ontario Public Service Employees Union, Local 309 (Respondent) v. Women's Resources of Kawartha Lakes (formerly Victoria County Women's Resources Services) (Intervener) (*Granted*)

Unit: "all employees of Women's Resources of Kawartha Lakes formally known as Victoria County Women's Resource Services in the City of Kawartha Lakes save and except coordinators, persons above the rank of coordinator, the Executive Assistant to the Executive Director and the Systems Administrator" (27 employees in unit)

Number of names of persons on revised voters' list	29
Number of persons who cast ballots	23
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	23
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of respondent	5
Number of ballots marked against respondent	18
Number of ballots segregated and not counted	0

0253-12-R: Joseph MacInnis (Applicant) v. The Ontario Public Service Employees Union (Respondent) v. Kingston Military Family Resource Centre Inc. (Intervener) (*Granted*)

Unit: "all persons employed by the Kingston Military Family Resource Centre Inc. in the City of Kingston, Ontario, save and except Managers and persons above the rank of Manager, Executive Assistant and Executive Director, all persons who exercise managerial functions or are employed in a confidential capacity in matters relating to labour relations within the meaning of section 1(3)(b) of the Ontario Labour Relations Act, 1995, all persons for whom a trade union held bargaining rights on September 30, 2010" (26 employees in unit)

Number of names of persons on revised voters' list	33
Number of persons who cast ballots	15
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	15
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of respondent	1
Number of ballots marked against respondent	14
Number of ballots segregated and not counted	0

0284-12-R: Build All Contractor's Employees c/o Frank May (Applicant) v. Labourers' International Union of North America, Local 247 (Respondent) v. Build All Contractors (Intervener) (*Dismissed*)

0296-12-R: Registered Staff of Craiglee Nursing Home (Applicant) v. SEIU (Respondent) (*Dismissed*)

APPLICATIONS FOR DECLARATION OF UNLAWFUL STRIKE (CONSTRUCTION INDUSTRY)

0533-12-U: KONE Inc., and, National Elevator and Escalator Association (Applicant) v. Steven Sampson, Sean McCormick, Laird Thomson, International Union of Elevator Constructors, Local 50, International Union of Elevator Constructors, Local 90, International Union of Elevator Constructors (Respondent) (*Withdrawn*)

0578-12-U: Daimler Buses North America (Applicant) v. CAW-Canada and its Local 2011, Paulo Ribeiro and Arastou Rafizadeh (Respondent) (*Granted*)

COMPLAINTS OF UNFAIR LABOUR PRACTICE

0350-07-U: United Food and Commercial Workers International Union, Local 333 (Applicant) v. Epic Protection Group Ltd. and Derrick Snowdy (Respondent) (*Withdrawn*)

1880-07-U: Service Employees International Union Local 1.on (Applicant) v. 1663432 Ontario Limited o/a Manoir Marochel Manor (Respondent) (*Terminated*)

3601-07-U: Universal Workers Union, Labourers' International Union of North America, Local 183 (Applicant) v. Bermingham Construction Limited, Carpenters Union, Central Ontario Regional Council, United Brotherhood of Carpenters and Joiners of America (Respondent) (*Withdrawn*)

2458-08-U: Alain Jobin (Applicant) v. Syndicat CAW/TCA Local 222 and, Keith Osborne (Respondent) (*Dismissed*)

1234-09-U: Labourers' International Union of North America, Ontario Provincial District Council (Applicant) v. Swift Railroad Contractors Corporation (Respondent) (*Withdrawn*)

3236-10-U: Carpenters District Council of Ontario, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Jam Finish Carpentry Inc. (Respondent) (*Withdrawn*)

0010-11-U: Ontario Public Service Employees Union (Applicant) v. Humber River Regional Hospital (Respondent) (*Withdrawn*)

0996-11-U: Melake Fisaha (Applicant) v. National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada) and its Local 1688 (Respondent) v. Coventry Connections Inc. (Intervener) (*Dismissed*)

1764-11-U: Labourers' International Union of North America, Local 625 (Applicant) v. River Valley Construction Inc. (Respondent) (*Withdrawn*)

1833-11-U: United Food and Commercial Workers International Union, Local 175 (Applicant) v. Breadko National Baking Ltd. (Respondent) (*Withdrawn*)

1892-11-U: Labourers' International Union of North America, Ontario Provincial District Council (Applicant) v. Lorna Marie Hubert o/a Niagara Traffic Services (Respondent) (*Withdrawn*)

2326-11-U: Canadian Construction Workers Union (Applicant) v. Saddlebrook Construction Inc. and/or Saddlebrook Management Consultants Inc. (Respondent) v. Labourers' International Union of North America, Local 183 (Intervener) (*Withdrawn*)

2658-11-U: Anna Conte (Applicant) v. Service Employees International Union, Local 1 Canada (Respondent) v. William Osler Health System (Intervener) (*Withdrawn*)

2776-11-U: Labourers' International Union of North America, Local 1036 (Applicant) v. Cy Rheault Construction Ltd. and, United Brotherhood of Carpenters and Joiners of America, Local 2486, The Corporation of the City of Sault Ste. Marie, PUC Inc., PUC Distribution Inc., PUC Services Inc., PUC Energies Inc. and, PUC Telecom Inc. (Respondent) (*Dismissed*)

2791-11-U: United Food and Commercial Workers Canada, Local 175 (Applicant) v. Green Grove Foods Corp. (Respondent) (*Withdrawn*)

2844-11-U: Sawraj Sidhu (Applicant) v. Service Employees International Union, Local 1 (Respondent) v. William Osler Health System (Intervener) (*Withdrawn*)

2881-11-U: Ontario Taxi Workers Union (Applicant) v. Hamilton Cab Co. (Respondent) (*Terminated*)

3206-11-U: Gerald MacDonald (Applicant) v. Teamsters Local 938 (Respondent) (*Withdrawn*)

3295-11-U: Group Grievances: Sandra Vernon and Susan Mathew (Applicant) v. Service Employees International Union Local 1, Canada (SEIU) (Respondent) v. William Osler Health System (Intervener) (*Withdrawn*)

3386-11-U: D. B. Norman (Applicant) v. CAW Canada Local 1941 (Respondent) v. Mahle Filter Systems Canada ULC (Intervener) (*Dismissed*)

3446-11-U: Communications, Energy and Paperworkers Union of Canada Local 975 (Applicant) v. Direct Energy Essential Home Services, (Respondent) (*Withdrawn*)

3540-11-U: Clare Smith (Applicant) v. Service Employees International Union (SEIU) Local 1 ON (Respondent) v. William Osler Health System (Intervener) (*Withdrawn*)

3606-11-U: Service Employees International Union Local 2, Brewery, General & Professional Workers' Union (Applicant) v. Les Residences Kaba & Leonard (Respondent) (*Granted*)

3634-11-U: Schneider Employees' Association (Applicant) v. Maple Leaf Consumer Foods Inc. (Respondent) (*Withdrawn*)

3723-11-U: Ontario Secondary School Teachers' Federation (Applicant) v. Ottawa-Carleton District School Board (Respondent) (*Withdrawn*)

3734-11-U: International Brotherhood of Electrical Workers, Local 804 (Applicant) v. 1205448 Ontario Inc. o/a Delsan Electric (Respondent) (*Withdrawn*)

3812-11-U; **3813-11-U**: Craig E. Grant (Applicant) v. National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada) (Respondent); Craig E. Grant (Applicant) v. Union of Canadian CAW Staff Representatives (Respondent) v. National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada) (Intervener) (*Dismissed*)

3874-11-U: International Brotherhood of Electrical Workers, Local 804 (Applicant) v. 1205448 Ontario Inc. o/a Delsan Electric (Respondent) (*Withdrawn*)

3988-11-U: Nazira Merchant (Applicant) v. Service Employees International Union Local 1 Canada (Respondent) v. William Osler Health System (Intervener) (*Withdrawn*)

4033-11-U: United Food and Commercial Workers International Union (UFCW Canada) (Applicant) v. Saputo Inc. (Respondent) (*Withdrawn*)

4116-11-U: Universal Workers Union, Labourers' International Union of North America Local 183 (Applicant) v. Bee-Clean Building Maintenance (Respondent) (*Withdrawn*)

0016-12-U: Christopher Carl Weaver (Applicant) v. National Automobile, Aerospace and Agricultural Implement Workers of Canada (CAW-Canada Local 504) (Respondent) (*Withdrawn*)

0066-12-U: United Food and Commercial Workers International Union (UFCW Canada) Local 102 (Applicant) v. Quality Hotel and Conference Centre (Respondent) (*Granted*)

0141-12-U: The Carpenters' District Council of Ontario, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Laird Constructors Inc. (Respondent) (*Withdrawn*)

0289-12-U: International Association of Bridge, Structural, Ornamental and Reinforcing Ironworkers, Local 721 (Applicant) v. Precismeca Limited (Respondent) (*Withdrawn*)

0327-12-U: Canadian Union of Public Employees, Local 1287 (Applicant) v. Lincoln County Humane Society (Respondent) (*Withdrawn*)

0453-12-U: The Canadian Union of Postal Workers (Applicant) v. 3119696 Canada Inc., operating as Quick Messenger Service (QMS), 1118041 Ontario Ltd., operating as Datarush Courier Service, 2945-8171 Quebec Inc., operating as Stingray Courier Service, 1120464 Pronto Courier Service (1995) Ltd., operating as Pronto Toronto (Respondent) (*Dismissed*)

0458-12-U: Labourers' International Union of North America, Local 1059 (Applicant) v. Grete Services Inc.,, Terri Martin and, Greg Martin (Respondent) (*Withdrawn*)

0481-12-U: Canadian Union of Public Employees, Local 1813.07 (Applicant) v. Muskoka Family Focus and Children's Place (Respondent) (*Withdrawn*)

APPLICATION FOR INTERIM ORDER

0217-12-M: United Food and Commercial Workers International Union, Local 175 (Applicant) v. Imperial Chilled Juice Inc. (Respondent) (*Withdrawn*)

APPLICATIONS FOR CONSENT TO PROSECUTE

0454-12-U: D. B. Norman (Applicant) v. Mahle Filter Systems Canada, ULC (Respondent) (*Dismissed*)

0504-12-U: United Food and Commercial Workers Canada, Local 175 (Applicant) v. Peter M. Hetz (Respondent) (*Withdrawn*)

APPLICATIONS FOR CONSENT TO EARLY TERMINATION OF COLLECTIVE AGREEMENT

0133-12-M: Hampton Inn & Suites (Applicant) v. United Brotherhood of Retail, Food, Industrial and Service Trades International Union (Respondent) (*Granted*)

TRUSTEESHIP

0306-11-T: Canadian Union of Public Employees (Applicant) v. CUPE Local 3701 (Respondent) (*Terminated*)

JURISDICTIONAL DISPUTES

2545-10-JD: International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers and its Local 721 (Applicant) v. Aecon Industrial, United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 463 (Respondent) v. Electrical Power Systems Construction Association (Intervener) (*Withdrawn*)

0564-11-JD: Board of Governors of Exhibition Place (Applicant) v. Labourers' International Union of North America, Local 506 and, United Brotherhood of Carpenters and Joiners of America, Local 27 (Respondent) (*Withdrawn*)

1367-11-JD: The Brick and Allied Craft Union of Canada, Local 2 (Applicant) v. Brick and Allied Craft Union of Canada, Local 31, Clifford Masonry Limited (Respondent) v. Masonry Industry Employers' Council of Ontario/ Ontario Masonry Contractors' Association-BACU Bargaining Committee, Labourers International Union of North America, Ontario Provincial District Council and Labourers International Union of North America, Local 506, Brick and Allied Craft Union of Canada, Terrazzo, Tile & Marble Guild Of Ontario, Inc. (Intervener) (*Terminated*)

2730-11-JD: Ontario Sheet Metal Workers' & Roofers' Conference and Sheet Metal Workers International Association, Local 269 (Applicant) v. Flynn Canada Ltd and, The Carpenters' District Council of Ontario Local 249 (Respondent) (*Dismissed*)

2946-11-JD: United Brotherhood of Carpenters and Joiners of America, Local 2222 (Applicant) v. Bruce Power LP, CFJ Nuclear Contractors Ltd., and, International Association of Bridge, Structural Ornamental and Reinforcing Iron Workers, Local 736 (Respondent) v. Electrical Power Systems Construction Association (Intervener) (*Granted*)

COMPLAINTS UNDER THE OCCUPATIONAL HEALTH AND SAFETY ACT

0863-11-OH: Derek Lucyk (Applicant) v. Abe's Auto Recycling Inc. (Respondent) (*Dismissed*)

3929-11-OH: Michael McIntyre (Applicant) v. Casino Rama Services Inc. (Respondent) (*Terminated*)

4032-11-OH: Jay Moore (Applicant) v. Valtec Construction Limited (Respondent) (*Withdrawn*)

4068-11-OH: Brent Zanchin (Applicant) v. Northern Uniform Service (Respondent) (*Withdrawn*)

0035-12-OH: Robert John Ritchie (Applicant) v. Ruskcast Inc. (Respondent) (*Withdrawn*)

0149-12-OH: Luciana B Boschetti, L. B. Boschetti & Associates Inc. (Applicant) v. GS1 Canada (Respondent) (*Withdrawn*)

0200-12-OH: Yvonne Culp (Applicant) v. Blue Line Transportation Ltd. (Respondent) (*Terminated*)

0299-12-OH: Maxine Rowe (Applicant) v. H & O Centerless Grinding Inc. (Respondent) (*Withdrawn*)

0305-12-OH: Sharon Tanti (Applicant) v. Tiger Drylac Canada Inc. (Respondent) (*Withdrawn*)

0317-12-OH: Richard Levasseur (Applicant) v. Proto Plastics (Respondent) (*Withdrawn*)

CONSTRUCTION INDUSTRY GRIEVANCES

0170-10-G: United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 787 (Applicant) v. Johnson Controls L.P., Brookfield LePage Johnson Controls Facility Management Services Ltd. and, Brookfield LePage Johnson Controls Facility Management Services LP (Respondent) (*Withdrawn*)

0494-11-G: Labourers' International Union of North America, Local 506 (Applicant) v. Board of Governors of Exhibition Place (Respondent) (*Withdrawn*)

1690-11-G: Canadian Union of Skilled Workers (Applicant) v. Hydro One Inc. (Respondent) (*Granted*)

2147-11-G: Carpenters District Council of Ontario, Local 1946 (Applicant) v. CC Group Contracting Inc. and, Janice Dougherty (Respondent) (*Endorsed Settlement*)

2605-11-G: United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 853 - Sprinkler Fitters of Ontario (Applicant) v. Fire Protection Solutions Inc. (Respondent) (*Endorsed Settlement*)

2620-11-G: International Union of Elevator Constructors, Local 50 (Applicant) v. Otis Canada Inc. (Respondent) (*Withdrawn*)

2956-11-G: Labourers' International Union of North America, Ontario Provincial District Council (Applicant) v. A & B Rail Services Ltd. and, A & B Rail Contractors Ltd. (Respondent) (*Withdrawn*)

3144-11-G: Canadian Union of Skilled Workers (Applicant) v. Hydro One Networks Inc. (Respondent) (*Withdrawn*)

3431-11-G: Masonry Council of Unions Toronto and Vicinity, Bricklayers, Masons Independent Union of Canada Local 1 and Universal Workers Union, Labourers' International Union of North America, Local 183 (Applicant) v. Di Rocco Masonry Group Ltd. (Respondent) (*Dismissed*)

3674-11-G: Universal Workers Union, L.I.U.N.A. Local 183 (Applicant) v. Dan's Custom Carpentry and Tomasz Daniel Lewczuk (Respondent) (*Withdrawn*)

3724-11-G: Labourers' International Union of North America, Ontario Provincial District Council (Applicant) v. A & B Rail Services Ltd. and, A & B Rail Contractors Ltd. (Respondent) (*Withdrawn*)

3737-11-G: Canadian Union of Skilled Workers (Applicant) v. Strabag Inc. (Respondent) (*Withdrawn*)

3778-11-G: International Brotherhood of Electrical Workers, Local 586 (Applicant) v. Boldt Theile Inc. (Respondent) (*Withdrawn*)

3800-11-G: Universal Workers Union, Labourers' International Union of North America, Local 183 (Applicant) v. Clearway Construction Inc. and/or, Teston Pipelines Limited (Respondent) (*Withdrawn*)

3823-11-G: Universal Workers Union, Labourers' International Union of North America, Local 183 (Applicant) v. King Cross Contracting Limited (Respondent) (*Withdrawn*)

3859-11-G: Labourers' International Union of North America, Ontario Provincial District Council (Applicant) v. Uhde Services GMBH and, Uhde Corporation of America (Respondent) (*Withdrawn*)

4066-11-G: Masonry Council of Unions Toronto and Vicinity, Bricklayers, Masons' Independent Union of Canada Local 1, and Universal Workers Union, Labourers' International Union of North America, Local 183 (Applicant) v. Benater Masonry Company Limited (Respondent) (*Withdrawn*)

4090-11-G: International Brotherhood of Electrical Workers, Local 353 (Applicant) v. Thornhill Electrical Inc. (Respondent) (*Terminated*)

0082-12-G: Labourers' International Union Of North America, Local 247 (Applicant) v. 1248833 Ontario Inc. c.o.b. as Harold's Demolition & Recycling (Respondent) (*Withdrawn*)

0146-12-G: United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 46 (Applicant) v. Sentinel Plumbing Inc. (Respondent) (*Terminated*)

0182-12-G: Labourers' International Union of North America, Local 625 (Applicant) v. Windsor Wall Forming Ltd. (Respondent) (*Withdrawn*)

0189-12-G: International Brotherhood of Electrical Workers, Local 353 (Applicant) v. Vantage Electrical Services Inc. (Respondent) (*Withdrawn*)

0190-12-G: International Brotherhood of Electrical Workers, Local 353 (Applicant) v. Murray Electrical Contractors Inc. (Respondent) (*Withdrawn*)

0229-12-G: Universal Workers Union, Labourers' International Union of North America, Local 183 (Applicant) v. 1131042 Ontario Ltd. o/a Triple A Concrete & Drain (Respondent) v. International Union of Operating Engineers, Local 793 (Intervener) (*Granted*)

0275-12-G: United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 46 (Applicant) v. Trafalgar Mechanical Inc. (Respondent) (*Withdrawn*)

0281-12-G: Sheet Metal Workers' International Association Local 537 (Applicant) v. Bellwood Sheet Metal Limited (Respondent) (*Withdrawn*)

0290-12-G: International Brotherhood of Electrical Workers, Local 353 (Applicant) v. Merc Electrical Ltd. (Respondent) (*Withdrawn*)

0303-12-G: Millwright Regional Council of Ontario and Its Affiliated Local Unions (Applicant) v. Dynamic Millwrighting Ltd. and Gary William Jennings (Director) (Respondent) (*Withdrawn*)

0307-12-G: International Brotherhood of Electrical Workers, Local 353 (Applicant) v. M. J. K. Electric Inc. (Respondent) (*Withdrawn*)

0309-12-G: International Brotherhood of Electrical Workers, Local 353 (Applicant) v. Tech 3 Inc. (Respondent) (*Withdrawn*)

0380-12-G: Labourers' International Union of North America, Local 837 (Applicant) v. Bravo Cement Contracting (Hamilton) Inc. (Respondent) (*Endorsed Settlement*)

0422-12-G: Labourers' International Union of North America, Local 527 (Applicant) v. 924241 Ontario Inc. o/a Romeo & Romeo Concrete Finishing (Respondent) (*Granted*)

0509-12-G: The International Union of Painters and Allied Trades, Local Union 1891 (Applicant) v. 1473157 Ontario Inc. o/a Kanadian Fireproofers (Respondent) (*Granted*)

0531-12-G: International Union of Painters and Allied Trades, Local 1795 (Applicant) v. Rainbow Glass Fab Inc. (Respondent) (*Granted*)

0571-12-G: United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, Local 221 (Applicant) v. 1000 Islands Mechanical Ltd. also operating as Thousand Islands Mechanical (Respondent) (*Withdrawn*)

APPEALS - EMPLOYMENT STANDARDS ACT

0704-10-ES: Lloyd and Edith Young a/s sole proprieporship (Applicant) v. Ricki Mills and,Director of Employment Standards (Respondent) (*Granted*)

0868-10-ES: Automotive Prototype & Tooling Inc. (Applicant) v. Gjergj Djelaj and, Director of Employment Standards (Respondent) (*Endorsed Settlement*)

1263-10-ES: Cardinal Health Canada 204, Inc. (Applicant) v. Rosemary Delany and, Director of Employment Standards (Respondent) (*Endorsed Settlement*)

1862-10-ES: 809011 Ontario Ltd. o/a Mr. Sub (Applicant) v. Niki Famelos and, Director of Employment Standards (Respondent) (*Dismissed*)

2405-10-ES: John Reid (Applicant) v. The Installation Group Inc. o/a The Installation Group and 6396780 Canada Inc. o/a The Installation Group and, Director of Employment Standards (Respondent) (*Withdrawn*)

2518-10-ES: Lynne Andrus (Applicant) v. 1692152 Ontario Limited o/a Angie's Outdoor Gear Up and, Director of Employment Standards (Respondent) (*Dismissed*)

2594-10-ES: Nalkan Inc. (Applicant) v. Thomas A. Livingstone and, Director of Employment Standards (Respondent) (*Dismissed*)

3209-10-ES: Joseph Walter Mathias (Applicant) v. Micah Jon Nantais/Micah Tile Installation, and Director of Employment Standards (Respondent) (*Dismissed*)

3264-10-ES: Tucci Enterprises Inc. o/a Levi's Outlet (Applicant) v. Jennifer Reid, and Director of Employment Standards (Respondent) (*Endorsed Settlement*)

3492-10-ES: United Wings Enterprise Inc. Operatingas United Wings Enterprise Inc. (Applicant) v. Rui Qiu, and Director of Employment Standards (Respondent) (*Endorsed Settlement*)

3625-10-ES: Jessica Matias (Applicant) v. 2142702 Ontario Inc. operating as The Wing Company and, Director of Employment Standards (Respondent) (*Dismissed*)

3921-10-ES: Prit Pal. S. Saini (Applicant) v. Taj Persian Rugs Inc. and, Director of Employment Standards (Respondent) (*Endorsed Settlement*)

0733-11-ES: Tyesha Heron (Applicant) v. Smart Start Learning Centre and Childcare Inc. and, Director of Employment Standards (Respondent) (*Dismissed*)

1044-11-ES: Peter G. Lenders (Applicant) v. Agricorp and, Director of Employment Standards (Respondent) (*Endorsed Settlement*)

1057-11-ES: Norma Lynn Pearson, a director of Union Medical Pharmacy Inc. (Applicant) v. Felisha Avelar and, Director of Employment Standards (Respondent) (*Endorsed Settlement*)

1058-11-ES: Norma Lynn Pearson, a director of Union Medical Pharmacy Inc. (Applicant) v. Jennifer Antunes and, Director of Employment Standards (Respondent) (*Endorsed Settlement*)

1059-11-ES: Norma Lynn Pearson, a director of Union Medical Pharmacy Inc. (Applicant) v. Luisa Farinaccia, Director of Employment Standards (Respondent) (*Endorsed Settlement*)

1063-11-ES: Gamaliel Altamirano Martinez (Applicant) v. Mucci Pac Ltd. and, Director of Employment Standards (Respondent) (*Endorsed Settlement*)

1084-11-ES: Franco Anthonipillai (Applicant) v. Don Valley North Automotive Inc., and Director of Employment Standards (Respondent) (*Endorsed Settlement*)

1752-11-ES: Aditya Birla Minacs Worldwide Inc. (Applicant) v. Rebecca Bedore and, Director of Employment Standards (Respondent) (*Granted*)

1789-11-ES: Susan Margaret Hill and 2203471 Ontario Inc. operating as The Coco Club and Sauble Dunes Restaurant (Applicant) v. Melissa Rosenburg and, Director of Employment Standards (Respondent) (*Endorsed Settlement*)

1931-11-ES: Labour Unlimited Ontario Inc. o/a Labour Unlimited Temporary Employment Services (Applicant) v. James Taylor and, Director of Employment Standards (Respondent) (Endorsed Settlement)

2048-11-ES: Timothy Leys and Kirsten Thesberg (Applicant) v. Agripina Likhanga and, Director of Employment Standards (Respondent) (*Dismissed*)

2059-11-ES: Dusan Jankovics, a director of 2216456 Ontario Inc. o/a The Big Smoke Barbeque (Applicant) v. Adrian Bell and, Director of Employment Standards (Respondent) (*Dismissed*)
2120-11-ES: Asma Ayaz (Applicant) v. 2052141 Ontario Inc. o/a Quizno's Sub and, Director of Employment Standards (Respondent) (*Granted*)

2154-11-ES: Mohinee Baljit, a director of Tri-City Computers Inc. (Applicant) v. Gordon Christopher Dowd and, Director of Employment Standards (Respondent) (*Dismissed*)

2196-11-ES: Aleksandra Kulik (Applicant) v. Virtual Causeway Inc., Director of Employment Standards (Respondent) (*Endorsed Settlement*)

2280-11-ES: Colise Stanley (Applicant) v. Jeff Wright Insurance Agency Inc., Director of Employment Standards (Respondent) (*Granted*)

2396-11-ES: Michael Africh (Applicant) v. Kleinsteuber General Contracting Inc. and, Director of Employment Standards (Respondent) (*Dismissed*)

2507-11-ES: Tina Beckett (Applicant) v. 1481425 Ontario Limited o/a Kent Residential Home and, Director of Employment Standards (Respondent) (*Endorsed Settlement*)

2526-11-ES: Sherry Hopkins (Applicant) v. 1719453 Ontario Inc. o/a Clean Team and, Director of Employment Standards (Respondent) (*Granted*)

2540-11-ES: Automatic Coating Limited (Applicant) v. Xu Guang Lai and, Director of Employment Standards (Respondent) (*Endorsed Settlement*)

2547-11-ES: A.S.G. Inc. operating as The Applications Systems Group (Applicant) v. Oscar R. Platero Martinez and, Director of Employment Standards (Respondent) (*Endorsed Settlement*)

2581-11-ES: Keosha Williams (Applicant) v. Peter B. Haslam, Director of Employment Standards (Respondent) (*Endorsed Settlement*)

2595-11-ES: Mario Madrid (Applicant) v. Window City Industries Inc. o/a Window City and, Director of Employment Standards (Respondent) (*Endorsed Settlement*)

2596-11-ES: Team Distribution Inc. and 671420 Ontario Inc. Operating as The Central Group (Applicant) v. Michelle Nadeau and, Director of Employment Standards (Respondent) (*Withdrawn*)

2671-11-ES: Julia G. Szabo (Applicant) v. Comcare (Canada) Limited o/a Comcare Health Services and, Director of Employment Standards (Respondent) (*Dismissed*)

2728-11-ES: David Bradbury (Applicant) v. Riptide Resources Inc. o/a Motorcycle Mojo, Director of Employment Standards (Respondent) (*Endorsed Settlement*)

2733-11-ES: Christopher A. Harper (Applicant) v. Corporation of the County of Simcoe and, Director of Employment Standards (Respondent) (*Endorsed Settlement*)

2752-11-ES: Helen Worhach (Applicant) v. Mr. Meat Market Eastside Limited and, Director of Employment Standards (Respondent) (*Withdrawn*)

2760-11-ES: SMS Construction and Mining Systems Inc. o/a SMS Rents (Applicant) v. Alessandro Gandolfo and, Director of Employment Standards (Respondent) (*Endorsed Settlement*)

2853-11-ES: Hair Bar Inc. o/a Hair Bar Inc. (Applicant) v. Nikol Mitzeva and, Director of Employment Standards (Respondent) (*Withdrawn*)

2864-11-ES: Big Island Quarries Inc. (Applicant) v. Suad Kuric and, Director of Employment Standards (Respondent) (*Withdrawn*)

3066-11-ES: Ernest David Wyatt (Applicant) v. Dependable Heating & Service Ltd. and, Director of Employment Standards (Respondent) (*Endorsed Settlement*)

3186-11-ES: Manouchehr Ahmadi-Jorny, Director of 1698020 Ontario Inc. (Applicant) v. Marvia Jones and, Director of Employment Standards (Respondent) (*Dismissed*)

3198-11-ES: Tania Walton (Applicant) v. Lorenz Conveying Products Corp and/or Quinte Northern and Eastern Capital Corp., Director of Employment Standards (Respondent) (*Endorsed Settlement*)

3251-11-ES: Senathirajah Sivarajah (Applicant) v. International Custom Products Inc. and, Director of Employment Standards (Respondent) (*Withdrawn*)

3324-11-ES: Susan Blouin, a Director of Whole Green Kids Corporation (Applicant) v. Lucy Maio, Kevin Hogan, Alan Ball, Anna Gagliano, Elvia Rosario Tajada Andrade, Christopher Jones, Director of Employment Standards (Respondent) (*Terminated*)

3335-11-ES: Aditya Birla Minacs Worldwide Inc. (Applicant) v. Ann Dixon and, Director of Employment Standards (Respondent) (*Endorsed Settlement*)

3345-11-ES: 1658018 Ontario Inc. o/a La Cucina Restaurant (Applicant) v. Raffaele Virdo and, Director Of Employment Standards (Respondent) (*Endorsed Settlement*)

3353-11-ES: 2196774 Ontario Limited Operating as Classico Pizza and Pasta (Applicant) v. Mujib Rahman and, Director of Employment Standards (Respondent) (*Endorsed Settlement*)

3354-11-ES: James C. Sawyer (Applicant) v. Centre Point Landing Ltd. and, Director of Employment Standards (Respondent) (*Withdrawn*)

3356-11-ES: Ralph Blaese (Applicant) v. Jeannine Maltais o/a New Start Personnel & Bookkeeeping, Director of Employment Standards (Respondent) (*Endorsed Settlement*)

3357-11-ES: 816748 Ontario Inc. operating as Troy's Toys (Applicant) v. Brian Loughlean and, Director of Employment Standards (Respondent) (*Endorsed Settlement*)

3360-11-ES: Emma Osborn (Applicant) v. Slate River Veterinary Professional Corporation and, Director of Employment Standards (Respondent) (*Endorsed Settlement*)

3406-11-ES: 1704853 Ontario Inc./Classic Disposal (Applicant) v. William Osterloo and, Director of Employment Standards (Respondent) (*Endorsed Settlement*)

3447-11-ES: TDG Furniture Inc. operating as Dufresne Furniture & Appliances Inc. (Applicant) v. Edyta Rollwagen, Director of Employment Standards (Respondent) (*Endorsed Settlement*)

3462-11-ES: Zantingh Direct Inc. (Applicant) v. Michelle Robinson and, Director of Employment Standards (Respondent) (*Endorsed Settlement*)

3489-11-ES: Rice Tool Manufacturing Inc. (Applicant) v. Michael Carr and, Director of Employment Standards (Respondent) (*Endorsed Settlement*)

3501-11-ES: Brent Howatt (Applicant) v. Kubes Alloy Products Inc., Director of Employment Standards (Respondent) (*Endorsed Settlement*)

3595-11-ES: Gordon Laschinger, a Director of Northern Ethanol (Canada) Inc. (Applicant) v. John Clark and, Director of Employment Standards (Respondent) (*Endorsed Settlement*)

3600-11-ES: 2108985 Ontario Ltd. operating as Arbour Restaurant (Applicant) v. Ricardo Marcellino and, Director of Employment Standards (Respondent) (*Endorsed Settlement*)

3602-11-ES: Karrie-Lee Karreman (Applicant) v. 1684976 Ontario Inc. The Power Pages and, Director of Employment Standards (Respondent) (*Endorsed Settlement*)

3617-11-ES: OEBIN LTD. operating as oeBin LTD (Applicant) v. Adam Markham and, Director of Employment Standards (Respondent) (*Endorsed Settlement*)

3623-11-ES: Mark Purdon Herlihy o/a Mark P Herlihy Farms (Applicant) v. Michel Carrier and, Director of Employment Standards (Respondent) (*Endorsed Settlement*)

3644-11-ES: Nancy E. Sperlins (Applicant) v. 1484917 Ontario Ltd. Mac's Convenience Stores and, Director of Employment Standards (Respondent) (*Endorsed Settlement*)

3649-11-ES: Helen Lam Sau Fung (Applicant) v. Emilita Mapa and, Director of Employment Standards (Respondent) (*Terminated*)

3690-11-ES: 2214263 Ontario Inc. and 1837654 Ontario Inc. o/a Pioneer Gas N Snak (Applicant) v. Nicolas Greavette and, Director of Employment Standards (Respondent) (*Endorsed Settlement*)

3691-11-ES: Driss Koriaa (Applicant) v. Leo Baker Contracting Inc. and James E. Baker and, Director of Employment Standards (Respondent) (*Endorsed Settlement*)

3726-11-ES: Julia Bach (Applicant) v. YWCA of Simcoe Muskoka and, Director of Employment Standards (Respondent) (*Endorsed Settlement*)

3748-11-ES: 1145258 Ontario Limited o/a Tim Hortons (Applicant) v. Elly Mae Small, Director of Employment Standards (Respondent) (*Endorsed Settlement*)

3834-11-ES: Thangavadivel Sellathamby (Applicant) v. Staff 247 Inc. and, Director of Employment Standards (Respondent) (*Terminated*)

3837-11-ES: Waste Container Services Inc. (Applicant) v. Leslie Yau and, Director of Employment Standards (Respondent) (*Endorsed Settlement*)

3842-11-ES: Edward Van Poucke (Applicant) v. 1068409 Ontario Limited o/a Double Diamond Acres and, Director Of Employment Standards (Respondent) (*Endorsed Settlement*)

3878-11-ES: Alltrans Transportation Inc. (Applicant) v. Pavlo Myskiv and, Director of Employment Standards (Respondent) (*Endorsed Settlement*)

3879-11-ES: Fitness, Etc. Inc. (Applicant) v. Tyler Partridge and, Director of Employment Standards (Respondent) (*Endorsed Settlement*)

3884-11-ES: 1131022 Ontario Inc. o/a Bloor Street Boxing and Fitness (Applicant) v. Claudia Priaulx, Director of Employment Standards (Respondent) (*Endorsed Settlement*)

3885-11-ES: Diamo Enterprises Inc. (Applicant) v. Behrouz Manouchehr and, Director of Employment Standards (Respondent) (*Endorsed Settlement*)

3898-11-ES: MMV Capital Partners Inc. (Applicant) v. Chris Micacchi, Director of Employment Standards (Respondent) (*Endorsed Settlement*)

3900-11-ES: MMV Capital Partners Inc. (Applicant) v. Mark Thurgood, Director of Employment Standards (Respondent) (*Endorsed Settlement*)

3901-11-ES: MMV Capital Partners Inc. (Applicant) v. Pierre Cormier, Director of Employment Standards (Respondent) (*Endorsed Settlement*)

3902-11-ES: MMV Capital Partners Inc. (Applicant) v. Alexandre Perematko, Director of Employment Standards (Respondent) (*Endorsed Settlement*)

3903-11-ES: MMV Partners Inc. (Applicant) v. Guhan Kashyap, Director of Employment Standards (Respondent) (*Endorsed Settlement*)

3907-11-ES: Karli J. Coppaway-Redmond (Applicant) v. Sunshrine Enterprises Inc. and, Director of Employment Standards (Respondent) (*Endorsed Settlement*)

3913-11-ES: Richard Watt, a director of Mega Brewing Co. Ltd. (Applicant) v. Tristan Reeb, Laura Reeb and, Director of Employment Standards (Respondent) (*Terminated*)

3928-11-ES: Jitendra Patel (Applicant) v. Imperial Parking Canada Corporation and, Director of Employment Standards (Respondent) (*Endorsed Settlement*)

3948-11-ES: SMSI Travel Centres Inc. (Applicant) v. Shane Jeffery and, Director of Employment Standards (Respondent) (*Endorsed Settlement*)

3972-11-ES: Robert Ladouceur (Applicant) v. Windover Lumber Ltd. c.o.b. Buckhorn Landscaping and, Director of Employment Standards (Respondent) (*Endorsed Settlement*)

4080-11-ES: Dianne M. McDonald (Applicant) v. Revera Inc., and Director of Employment Standards (Respondent) (*Endorsed Settlement*)

4083-11-ES: Yu Fen Wu (Applicant) v. Rong Zhen Li and, Director of Employment Standards (Respondent) (*Dismissed*)

4099-11-ES: Travis John Kimlerley (Applicant) v. 1105729 Ontario Inc. o/a Classic Towing and, Director of Employment Standards (Respondent) (*Withdrawn*)

4112-11-ES: Desmond Carabine (Applicant) v. Ex Animo Support Services Inc., and Director of Employment Standards (Respondent) (*Terminated*)

0096-12-ES: Blommer Chocolate Company of Canada Inc. (Applicant) v. Randall Ibey and, Director of Employment Standards (Respondent) (*Endorsed Settlement*)

0163-12-ES: Aditya Birla Minacs Worldwide Inc. (Applicant) v. Ellen Challice and, Director of Employment Standards (Respondent) (*Terminated*)

0205-12-ES: Blue Power Distributed Energy Corp. (Applicant) v. Deborah McAuslane and, Director of Employment Standards (Respondent) (*Endorsed Settlement*)

0216-12-ES: Canadian Pardon Services (Applicant) v. James Pouch and, Director of Employment Standards (Respondent) (*Terminated*)

0237-12-ES: Dawna Hannah, a Director of 1052500 Ontario Ltd. operating as Hawthorne Kitchen Design (Applicant) v. Steven Monteiro and, Director of Employment Standards (Respondent) (*Granted*)

0241-12-ES: Chris A. Morren (Applicant) v. Ikea Limited, Ikea Canada Ltd. and, Director of Employment Standards (Respondent) (*Endorsed Settlement*)

0279-12-ES: Rosita Walkowicz (Applicant) v. ZZZ Best Lawn Cutting and Window Cleaning, Director of Employment Standards (Respondent) (*Withdrawn*)

0280-12-ES: Redmen Redimix Inc. (Applicant) v. Richard T. Quesenberry, and Director of Employment Standards (Respondent) (*Terminated*)

0319-12-ES: Saad Ahmed (Applicant) v. Planet Energy Corp., and Director of Employment Standards (Respondent) (*Terminated*)

0387-12-ES: Queosha Walters (Applicant) v. 4536631 Canada Inc o/a RONA Lansing, and Director of Employment Standards (Respondent) (*Endorsed Settlement*)

0397-12-ES: 1449119 Ontario Inc. o/a Joshua Creek Variety (Applicant) v. Karim Henain, and Director of Employment Standards (Respondent) (*Dismissed*)

0493-12-ES: MMV Capital Partners Inc. (Applicant) v. Sarah Ferguson and, Director of Employment Standards (Respondent) (*Endorsed Settlement*)

0495-12-ES: MMV Capital Partners Inc. (Applicant) v. Christian Sheppard and, Director of Employment Standards (Respondent) (*Endorsed Settlement*)

APPEALS - OCCUPATIONAL HEALTH AND SAFETY ACT

2771-11-HS: Manpower Services Canada Limited (Applicant) v. Dallas Booth and, David Mason, Inspector (Respondent) (*Withdrawn*)

3529-11-HS: Julienne Hall (Applicant) v. The City of Toronto-Employment and Social Services Division and, Alice Bensimon, Inspector (Respondent) (*Dismissed*)

0049-12-HS; **0051-12-HS**: 7797079 Canada Inc. (Applicant) v. Douglas Cettina, Inspector (Respondent); Mac's Convenience Stores Inc., A Couche-Tard Company (Applicant) v. Douglas Cettina, Inspector (Respondent) (*Withdrawn*)

0405-12-HS: Gap Inc. (Applicant) v. Issa Muse, Inspector (Respondent) (*Dismissed*)

FIRST AGREEMENT - DIRECTION

3779-11-FC: Labourers' International Union of North America, Local 247 (Applicant) v. Build-All Contractors (Respondent) (*Withdrawn*)

PAY EQUITY ACT

1443-11-PE: Touchstone Youth Centre (Applicant) v. Ann-Marie George and employees not represented by a Bargaining Agent (Respondent) (*Dismissed*)

PUBLIC SECTOR LABOUR RELATIONS TRANSITION ACT, 1997

1636-09-PS: Ontario Public Service Employees Union (Applicant) v. Royal Ottawa Health Care Group; Brockville General Hospital; and, Canadian Union of Public Employees (Respondent) v. Ontario Nurses' Association (Intervener) (*Granted*)

Unit: "all employees of Brockville General Hospital, save and except professional medical staff; dieticians; pharmacists; executive secretaries/assistants; human resources staff; payroll clerks/officers; information technology staff; Director Patient Care assistants; Coordinators, supervisors, persons above the rank of supervisor; co-op students and students employed during the school vacation period; and persons for whom any other trade union held bargaining rights as of January 29, 2007" (99 employees in unit)

Number of persons on voters' list at start of vote	366
Number of persons who voted	277
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	274
Number of segregated ballots cast by persons whose names appear on voter's list	1
Number of segregated ballots cast by persons whose names do not appear on voters' list	2
Number of spoiled ballots	1
Number of ballots segregated and not counted	3

1804-11-PS: Kenora-Rainy River Districts Child and Family Services (Applicant) v. The Canadian Union of Public Employees and its Local 2332 and Ontario Public Service Employees Union and its Local 739 (Respondent) (*Granted*)

Unit: " all employees of Kenora-Rainy River Districts Child and Family Services in the Districts of Kenora and Rainy River save and except supervisors, persons above the rank of supervisor, Residential Coordinators, Senior Accountant, Directors of Service, Director of Finance and Administration, Secretary to Executive Director, Executive Secretaries, Human Resources Manager, Payroll/Personnel Clerks and students employed during the school vacation periods or on a cooperative work study program" (99 employees in unit)

Number of persons on voters' list at start of vote	289
Number of persons who voted	194
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	191
Number of segregated ballots cast by persons whose names appear on voter's list	3
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots segregated and not counted	3

APPLICATIONS FOR RECONSIDERATION OF BOARD'S DECISION

2277-09-ES: Ranko Curuvija o/a Olgica Trucking (Applicant) v. Marijan Malbasic and, Director of Employment Standards (Respondent) (*Dismissed*)

3908-09-U: Albert Tsoi (Applicant) v. UNITE HERE, Local 75 (Respondent) v. Hilton Toronto (Intervener) (*Dismissed*)

1444-10-ES: Deena Schiller (Applicant) v. P & L Corporation Ltd. and, Director of Employment Standards (Respondent) (*Dismissed*)

3216-10-ES: P&P Sodh Inc. operating as Quiznos Sub (Applicant) v. Shauna Kavanagh and Director of Employment Standards (Respondent) (*Dimissed*)

0295-11-U: Jang B. Singh (Applicant) v. Windsor University Faculty Association (Respondent) v. University of Windsor (Intervener) (*Dismissed*)

0633-11-U: Mario Cervi (Applicant) v. CAW Canada (Respondent) v. General Motors of Canada Limited (Intervener) (*Dismissed*)

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